

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Nathaniel Roberts, et al.,

Plaintiffs,

v.

County of Mahoning, Ohio, et al,

Defendants.

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CASE NO. 4:03 CV 2329

REPORT OF THE COURT'S EXPERT WITNESS

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I. Introduction

The district court in this case issued its Memorandum Opinion, including Findings of Fact and Conclusions of Law, determining that conditions at the Mahoning County Justice Center ("jail") violate the constitutional rights of the inmates comprising the plaintiff class. *See* Doc. No. 93.¹ The court further announced its intention to appoint a special master pursuant to the provisions of 18 U.S.C. § 3626(f). *Id.* at 53. Subsequently, on March 28, 2005 and based on the agreement of all parties, the court appointed me to serve as special master. *See* Doc. No. 108.

In my capacity as special master, I submitted seven reports to the district court. In the fourth of these reports I recommended the formation of a working group of Mahoning County and City of Youngstown officials to develop a written remedial plan to address the problems of unconstitutional crowding in the jail. *Fourth Report of the Special Master*, August 10, 2005 (Doc. No. 132). The district court adopted this recommendation in its order of September 14, 2005. *See* Doc. No. 139. The working group convened and remained in operation through May 1, 2006, when it filed its final report indicating that it could not obtain the agreement of City of Youngstown officials to the population control measures the group was recommending. *Mahoning County Criminal Justice Working Group's May 1, 2006 Final Report*. *See* Doc. No. 191. As a result, the district court found "that it is unlikely that the plan to maintain constitutional population levels at the jail will be effective without some intervention by this Court in the form of a prisoner

¹ I use the term "district court" throughout this report to refer to Honorable David D. Dowd. The term "three-judge court" refers to the court appointed on June 7, 2006 in response to Judge Dowd's request for convening such a court pursuant to the Prison Litigation Reform Act.

release mechanism.” *Order of May 25, 2006* at 5. *See* Doc. No. 193. The district court further found that “the defendants have been given an opportunity to correct the problem of jail overcrowding and have been unable to do so without further intervention by this Court” and directed that “the matter of determining a prisoner release order be referred to a three-judge panel in due course in accordance with 28 U.S.C. §3626(a)(3)(D) and 28 U.S.C. §2284.” *Id.*

Honorable Danny J. Boggs, the Chief Judge of the United States Court of Appeals for the Sixth Circuit, entered an order on June 7, 2006, appointing the current members of the three-judge court. *See* Doc. No. 194. On August 2, 2006, the three-judge court scheduled a status conference to be conducted on August 28, 2006. *See* Doc. No. 210. Following that hearing the three-judge court entered an order on several subjects, including subsequent proceedings during which the court intends to hear evidence “to update the fact-findings” the district court made on March 10, 2005. *Order of September 7, 2006* at 6. *See* Doc. No. 224. The three-judge court also appointed me “to serve as the court’s expert within the meaning of Fed.R.Evid. 706(a) for the express purpose of serving and filing an expert report collecting his findings relative to the question whether crowding at the Jail is the cause of constitutional violations” and, “if the answer is in the affirmative, ... [to] opine as to whether, in his view, there is any other viable form of relief, short of a prisoner release order, that could remedy the violations.” *Id.* at 7. It is pursuant to the last-cited order that I am submitting this report.

II. Qualifications

The district court is acquainted with my background and qualifications. At this point, I shall summarize my background and experience for the other members of the

three-judge court. In order to provide greater detail I have attached a copy of my current resume as Exhibit 1 to this report.

Following my graduation from law school I taught law, first at The University of Indiana and then at The University of Toledo, from 1961 until mid-1979. I then entered the private practice of law and, several years later, founded my own law firm of Nathan & Roberts in Toledo. Since 1975 I have been heavily – indeed near exclusively – involved in the field of corrections.

I have served as a special master or court monitor for federal courts in Ohio, Georgia, Texas, New Mexico, Puerto Rico, and Michigan. These appointments spanned the full range from individual jails or prisons (e.g., Ohio, Georgia) to entire state or Commonwealth prison systems (e.g., Texas, New Mexico, Puerto Rico). United States district courts have appointed me as the court's expert witness in Georgia, Ohio, Rhode Island, and Puerto Rico. I have served as a consultant or expert witness for plaintiff classes and for departments of corrections in a number of prison conditions cases. I also have consulted for the United States Department of Justice Civil Rights Division's Special Litigation Section and the National Institute of Corrections. The Civil Rights Division employed me as a consultant in connection with the development of Core Detention Standards for local detention facilities under contract with the United States Department of Justice.

Many of the activities I have described above involved evaluations of the problems that are the subject of this report. Crowding, staffing, classification, maintenance, and inmate-on-inmate violence have been issues in most of those cases or matters. I have been qualified as an expert in the field of corrections, including

correctional administration, by the courts before which I have testified. Since 2003 I have been a visiting faculty member, and then a Lecturer, in the Department of Criminal Justice at the University of Toledo. I am a member of the Graduate School faculty at the university and teach in the field of corrections, both at the undergraduate and the graduate levels.

III. Preparation for Writing This Report

At the time of my appointment I had several professional obligations that required completion before I could begin to prepare this report. I completed those projects as promptly as possible and turned to the preparation of the instant report.

My first task was to travel to Youngstown with one of my graduate assistants, Dustin Glass.² We attended a series of meetings on September 20 and 21, 2006, one with Paul Gains and Linette Stratford of the Mahoning County Prosecutor's office, another with Iris Torres Guglucello and Anthony Farris of the Youngstown City Law Department, and a third with Robert Armbruster and Tom Kelley, counsel for the plaintiff class. In addition, we met with Sheriff Randall Wellington, Major Thomas Scanlon, Captain James Lewandowski, and Jail Administrator Alki Santamas. I discussed at each of these meetings my preliminary thoughts about the task ahead of me and heard ideas and concerns about the situation in the jail. I encouraged input from all

² Mr. Glass received his Master of Arts degree in criminal justice from the University of Toledo in the spring of 1996. Cory Nafziger, the graduate assistant who has been assisting me to date, was unable to join me for this trip, and it was unclear at that time how much additional time he would have to work on the *Roberts* case. Because of my urgent need for assistance in order to produce this report, I have asked both Mr. Glass and Mr. Nafziger to make themselves available for this purpose to the extent they are able to do so. If the three-judge court ultimately approves this arrangement, I shall bill each graduate assistant at \$25.00 per hour, Mr. Nafziger's rate since I began to fulfill my duties as special master. Otherwise, I shall compensate Mr. Glass from my own funds. Without question, I could not have produced a report of this detailed nature without the extensive assistance of both Mr. Nafziger and Mr. Glass.

counsel and jail staff at all times. All counsel and I reached agreement on the subject of keeping attorneys for all parties informed of formal requests for documents I would be making, as well as formal requests by counsel that I review certain documentation in their possession. Apart from these kinds of communications, all counsel agreed that they and I could continue to have informal communications like those I have enjoyed with counsel and jail officials in my capacity as special master. Such informal communications might relate to logistical matters, updates on my activities as the court's expert, and information regarding ongoing issues and problems in the jail.

Upon my return to Toledo I developed a list of documents and information I concluded would be required to address the matters identified in the September 7, 2006 order of the three-judge court. After discussing a draft of that request with jail officials I submitted a final version of the request on September 29, 2006. I have attached a copy of that request as Exhibit 2 to this report. I made supplemental requests for information on October 26, 2006 and, at the request of counsel for the City of Youngstown, on November 1, 2006. I have attached copies of these requests as Exhibit 3 and Exhibit 4, respectively. Exhibit 4.1 is Captain Lewandowski's response to my November 1, 2006 document request.³

Mr. Glass again accompanied me to Youngstown on October 11, 2006. He and I met with jail officials on October 12 to further clarify the original document request and to discuss progress toward meeting that request. Mr. Glass and I spent the remainder of that day as well as the next two days interviewing individual inmates in various pods

³ Captain James Lewandowski was primarily responsible for accumulating and forwarding the information and documents I requested. All jail officials have cooperated with me in this connection, but Captain Lewandowski's efforts have been exceptionally burdensome to him and helpful to me.

throughout the jail. We also viewed several cellblocks when all inmates were allowed to be out of their cells and to go to the gym or the dayroom. The chief purposes of these activities were to (1) evaluate the extent of crowding from the inmates' perspective; (2) physically observe the state of crowding in cells, common areas, and gymnasiums; and (3) speak with deputies and other jail staff regarding their perceptions of the impact of crowding on the management and operation of the jail.

IV. Preliminary Considerations

The jail includes a booking area with ten beds, two medical pods (four beds in B Pod for women and ten beds in C Pod for men), and 11 occupied pods (F, G, H, I, N, O, P, S, T, R, and U). All but R Pod and U Pod are in the North Tower. Other pods in the South Tower, pods D, E, J, K, L, and Q, are unoccupied and are not staffed. As I shall explain in greater detail below, this reduction in capacity occurred after the district court's entry of its March 10, 2005 Memorandum Opinion and resulted from reduced allocations of funds by the Mahoning County Commissioners for the operation of the jail. This reduction followed the defeat of a renewal of a ½ % addition to the Mahoning County sales tax upon which the funding of county functions, including the jail, depended in part.

I have limited my definition of the jail to beds currently funded by the County Commissioners for several reasons. It is obvious that the County's needs include a large number of essential and important services. Although I believe that the maintenance of the jail is one of these services, I am not in a position to balance all of the conflicting needs and factors that led the County Commissioners to their decision regarding the funding of the jail. I have neither the expertise nor the experience to accomplish this

task; moreover, I have grave reservations that such an effort on my part would be useful or appropriate, even if it were feasible. The definition of the jail as I have described it, however, provides a basis to consider another issue, which is central to the responsibility the three-judge court has placed on me: the determination of whether the jail operates in a constitutional fashion.

Given the limited financial resources at his disposal to operate the jail, the Sheriff has made certain decisions about capacity, assignments of inmates, and staffing. Caught between the rock of limited resources and the hard spot of a constant flow of prisoners – pre-trial and sentenced, misdemeanants and felons – from the municipal and common pleas courts, he made a judgment to open the pods I have identified above, to convert a substantial number and percentage of the cells in these pods to double-occupancy, to staff these pods with available deputies, and to attempt to provide certain out-of-cell activities, as well as programs and services, for prisoners.⁴

I shall discuss each of these subjects, as well as others, in later sections of this report. What is important to note here is that any definition of a constitutional jail must take into account these various elements, with particular attention to the extent to which inmates are held in a safe and secure setting. A facility can only provide a safe (and thus, constitutional) environment by maintaining a manageable number of prisoners who are properly classified and assigned to stratified housing units.⁵ Essential safety also

⁴ Programs include education and self-help programs such as those provided by Community Corrections Association, as well as out-of-cell recreation and visiting. By services I mean those operations that are required to meet the essential needs of prisoners, e.g., medical care and mental health care.

⁵ A "stratified" housing unit is one that holds properly classified prisoners whose classification levels (i.e., maximum, medium, minimum) are compatible.

depends on the adequate surveillance of prisoners at all times, something that only trained and well-supervised line staff in sufficient numbers can accomplish. Finally, necessary physical plant maintenance, programs, and essential services are prerequisites to the sound physical and mental well being of inmates during their incarceration.

The remainder of this report will address conditions in the jail. In particular, I shall focus on crowding and the deleterious effects overpopulation has had on the safety and security of prisoners. Closely related are the lack of sound classification of inmates and the haphazard mixed assignment of prisoners of all classification levels to pods and cells throughout the jail, conditions that are the direct and foreseeable results of crowding. Some of the more important inevitable and deleterious consequences of maintaining a correctional facility with an excessively large, essentially unclassified, and improperly assigned population are poor surveillance, lack of control by staff, unacceptable levels of violence, excessive lockdown time in cells, and undue stress on the physical plant. These elements, whether standing alone or in combination, produce a paradigm of unconstitutional conditions of confinement that are unduly punitive particularly as they affect pre-trial detainees.

V. Capacity and Crowding

A. Design Capacity

The design capacity of the Mahoning County Justice Center is 432.⁶ This number includes the pods in the North Tower (F, G, H, I, N, O, P, S, T) and the South Tower (D, E, J, K, L, Q, R, U), but excludes 10 cells in the booking area and 14 cells in the medical

432
210 - double
642

⁶ "Design capacity" refers to the number of prisoners a facility was built to accommodate.

area. This capacity assumes that all cells will be single occupancy and that no double occupancy assignments will be made anywhere in the jail.

B. Variance Approved by the ODRC Bureau of Adult Detention

On January 8, 2002, Sheriff Wellington sought a variance from the Ohio Department of Rehabilitation & Correction (ODRC) Bureau of Adult Detention to permit double-occupancy assignments in seven pods (D, E, S, T, R, U, and H). *See Exhibit 5.*⁷ According to the Sheriff's letter to the Administrator of the ODRC Bureau of Adult Detention, "These housing areas are classified as general population non-violent offenders." *Id.* at 2. Prior to this request the 2002 population statistics reflected an average of 456 inmates in the jail (excluding the minimum security jail, which held an average of 84 during that year). The Sheriff sought permission to convert all of the designated pods to full double occupancy status. This variance would have added 210 beds to the jail, bringing the adjusted capacity to 642.⁸

⁷ The Bureau's purpose includes the promotion of "safe, secure, efficient, and lawful jail systems by assisting local officials in the state to comply with the 'Minimum Standards for Jails in Ohio.'" One of the functions of the Bureau is "processing variance requests to the standards when alternative practices meet the intent of compliance." Ohio Department of Rehabilitation & Correction website <http://www.drc.state.oh.us/web/bad.htm>, last visited on November 19, 2006. Section 5120.10 of the Ohio Revised Code requires the ODRC to promulgate minimum standards for jails in Ohio "to serve as criteria for the investigation and supervisory responsibilities vested in the Bureau of Adult Detention." *Minimum Standards* at 2. Pursuant to section 5103.18 of the Ohio Revised Code, the Department of Rehabilitation and Correction is required to approve, before adoption by the proper officials, plans for major renovations or new construction of jails, workhouses and municipal lockups." *Id.* at 4. The Sheriff was required to obtain a variance for double occupancy housing because cells in the jail are only slightly larger than 70 square feet, and the Minimum Standards require at least 100 square feet of space for double occupancy. *Minimum Standards* at 20. *See Exhibit 5.2.* Please note that some exhibits to this report include separate but related documents. In these instances, I have identified the exhibit with designations of subparts, e.g., Exhibit 5, Exhibit 5.1, Exhibit 5.2, and Exhibit 5.3. The reader can find all subparts by opening the relevant main exhibit, in this case, Exhibit 5.

⁸ The Sheriff sought permission to double-cell all cells in D, E, S, T, R, U, and H pods. In combination, these cells house 210 single-celled inmates.

In a response dated February 28, 2003, the ODRC Bureau of Adult Detention approved the following variance:

798
The Sheriff was permitted by the variance to add one additional bunk in 21 of the 36 cells on S, T, U, and R pods. Fifteen cells on each range were to remain single bunked. Thus, housing capacity was increased from 36 to 57 on each pod under the variance. ... The Sheriff was permitted by the variance to add one additional bunk in 24 of the 36 cells on D/E pod and 24 cells on H/I pod. Thus, housing capacity was increased from 36 to 60 on each pod under the variance.

First Report of the Special Master, Exhibit C at ¶10 (April 6, 2005). See also Exhibit 5.1.

Capacity
w/ ODRC
approved
The effect of the approved variance was to increase the capacity of the jail from its design capacity of 432 to a modified capacity of 564, an increase of 132 (78 fewer than the Sheriff requested). The Sheriff added these beds in the latter part of 2003. *See First Report of the Special Master, Exhibit C at ¶¶ 8 through 12 and Exhibit 5, supra*, to the instant report. Jail officials, however, did not comply with the limitation on the number of double occupancy cells approved by the variance. As of October 1, 2006, S Pod had 25 double occupancy cell rather than the approved 21; T Pod had 24 double occupancy cells rather than the approved 21; U Pod had 28 double occupancy cells rather than the approved 21; and R pod had 25 double occupancy cells rather than the approved 21. H/I pod had 25 double occupancy cells, the number approved for that unit when male inmates were assigned there. The variance authorized the use of 132 double occupancy cells. In fact, from September 26, 2006, when jail officials began to provide me on a daily basis with the number of double occupancy cells in use, through October 20, 2006,

failure to follow

the number of double occupancy cells in the jail ranged from 141 to 187. The average number of double occupancy cells during that period was 153.78.

C. Conditions Affecting the Variance and Defendants' Compliance with Those Conditions

The variance I have described was not unconditional. To the contrary, the Bureau of Adult Detention denominated the expanded pods "modified dorms" and attached the following conditions to the assignment of increased numbers of inmates to the specified housing units:

- (1) prisoner risk categories for 'modified dorms' must be limited to 'minimum risk or low-level 'medium' risk prisoners;
- (2) available showers must be sufficient to accommodate the increase in prisoners (typically a shower for every 12 prisoners);
- (3) available jail programs and jail services must be able to accommodate the increase in prisoners;
- (4) sufficient staff counts must be available to provide proper staff supervision over the increase in prisoners.
- (5) the individual cell doors must be placed in permanent or near permanent open status by some type of physical means; and
- (6) sufficient numbers of single celled pods must remain intact to provide proper housing and supervision over prisoners in segregation status or high-risk status.

I shall proceed to outline the extent of the defendants' compliance with each of these conditions.⁹ In doing so, I shall discuss some subjects, for example classification,

⁹ I use the term "defendants" to describe the County defendants in this lawsuit, the Sheriff and the County Commissioners. Although the City of Youngstown has intervened for purposes of the three-judge court

programming, and staffing, to which I shall return in later sections of the report. The initial discussions of these subjects concern the issue of the defendants' compliance with the conditions the Bureau of Adult Detention imposed on the variance it approved; the later text addresses some of the same subjects, but in the larger context of what I regard to be the most important and destructive effects of crowding in the jail.

1. Assignment of Minimum or Low-Level Medium Risk Inmates to Modified Dorms

The defendants have failed to comply with this critically important condition of the Bureau of Adult Detention's variance. They did not exclusively limit the prisoners assigned to the pods affected by the variance to those classified as "minimum risk" or "low level medium risk" prisoners. As of October 1, 2006, H/I Pod held all women of all classifications, including maximum security, and T Pod held exclusively male maximum security inmates. S Pod, R Pod, and U Pod were mixed, containing minimum, medium, and maximum security inmates. In addition, as later sections of this report will demonstrate, prisoners of different gangs, prisoners under separation orders, and prisoners undergoing treatment in the form of psychiatric medication were scattered throughout pods without reference to any need for separation. This chaotic condition is directly related to the safety of inmates and constitutes perhaps the most dangerous of the conditions in the jail at this time.

proceeding, it has no obligations pursuant to prior orders of the district court regarding the operation of the jail. The City's only interest is the avoidance of a prisoner release order that might affect the housing of misdemeanants in the jail.

2. Maintenance of Shower Ratios

Jail officials provided me with information regarding the number of showers available in each housing pod:

Shower Ratios

Pod	Number of Inmates 10/01/06 or capacity, whichever is higher	No. of Showers	Ratio
F	26	2	1:13
G	22	2	1:11
H	55	3	1:18.3
I	6 single cells	1	1:6
N	18	2	1:9
O	18	2	1:9
P	42	4	1:10.5
S	63	4	1:15.75
T	60	4	1:15
R	61	4	1:15.25
U	64	4	1:16

Thus, the defendants do not comply with the 1 to 12-shower ratio in six pods.¹⁰

Although the actual ratio of showers to prisoners in most housing units is not substantially lower than that required by the Bureau of Adult Detention, inmates in several pods complained about difficulties they encountered finding free showers for bathing. The problem becomes even more severe when one or more showers are out of service. This not-unusual phenomenon creates yet another source of tension among inmates in crowded housing units.

¹⁰ Even if jail officials maintained the population at the levels authorized by the variance (57 in S, T, R, and U pods and 54 in I Pod), the number of showers required would not have been available in six of eleven pods.

3. Provision of Expanded Programs

Community Corrections Association (CCA) provides all programming at the jail. The Chief Executive Officer of CCA is Richard J. Billak, Ph.D. Programs offered to inmates are the following: Commitment to Change, Substance Abuse Education, Stress and Anger Management, Domestic Violence, Adult Basic Education, and GED (high school equivalency) educational programming.

According to information I received from Dr. Billak's office, CCA was providing programming to 96 inmates in the minimum security jail and approximately 70 sentenced inmates in the jail on February 28, 2003, when the Bureau of Adult Detention granted the population variance I have described. At that time, CCA employed seven program staff for this purpose, and hired no additional staff as a result of the variance. Subsequently, in March 2005, CCA began to offer services to all inmates at the jail. Its services in the minimum security jail, however, ended in March 2005, when that facility closed.

In 2005, when the jail's population was capped at 296 by agreement of the parties through counsel, CCA accepted a substantial reduction (from \$235,000 to \$123,650) in its budget for programming in the jail and reduced its program staff from seven to four. One of the four remaining staff is paid from agency funds rather than from the jail's budget. It is important to keep in mind that the obligation to provide adequate programming continues to apply to the jail as long as the defendants are housing prisoners in double occupancy cells pursuant to the Bureau of Adult Detention's

variance.¹¹ Nevertheless, as the population grew from 296 on April 13, 2005 to 464 on May 15, 2006, jail officials took no steps to meet the increased need for programming.¹²

In addition to the reduction in staff that accompanied the increase in population, operational activities further hamper scheduled programming. According to Dr. Billak the posted schedule for group programming activities is "constantly changed due to jail operations, events and in-house activities that are re-scheduled without knowledge (i.e., recreation, visiting, church services)." Letter from Richard J. Billak, Ph.D., to Vincent M. Nathan, November 10, 2006, attached as Exhibit 5.3. In addition, inmates are not able to attend classes when commissary is being distributed, when maintenance staff are in the pod, or when lockdowns occur for any other reason, and programs must be scheduled around numerous other activities in the jail. These include visiting, church services, legal assistance, disciplinary hearings, recreation, visits by mental health staff, and nurse call. Moreover, inmates from different pods cannot participate in programming in the same room simultaneously. Crowding plays a direct part in many of these conflicts and difficulties.

In summary, the defendants cannot be regarded as being in compliance with this condition imposed by the Bureau of Adult Detention. There has been no expansion of programming resources to compensate for the increase in the jail's population beyond 296. Thus, defendants clearly are not complying with the spirit of the condition requiring adequate programming. This shortcoming contributes to idleness and

¹¹ In other words, the closing of the South Tower and the change of populations assigned to various pods in the jail are irrelevant to the obligation to provide adequate programming.

¹² The population of the jail continues to rise as this report is being written. The count on November 20, 2006 was 481.

increases tension among prisoners, thus directly affecting the safety and security of inmates and staff alike.

4. Sufficient Counts by Staff

I have attached as Exhibit 6 post orders for housing unit deputies for 12-hour posts, both for the day shift (1900 to 0700 and 0700 to 1900) and for the night shift (0900 to 1900). These post orders became effective on March 23, 2006.¹³ These post orders require five official counts per 24-hour period. These counts occur at 1900, 2200, 0630, 0700, and 1830. In addition, between 2230 and 0500 pod deputies must conduct a "direct, in-person surveillance of each prisoner ... on an irregular schedule twice an hour." See post orders for night shift at 3. In view of the secure architectural design of the jail (with the apparent exception of outdoor recreation areas, which are not in use), the number of formal counts and the direct surveillance requirements during sleeping hours are consistent with reasonable correctional practice in an uncrowded jail. A cursory review of pod logs indicates that the defendants are in compliance with the requirement for counts in the post orders. Because of the defendants' failure to meet important other requirements of the variance and in view of the density of the population in the jail, however, this schedule for mandatory counts is not sufficient to protect inmates who are locked into double occupancy cells.

5. Maintenance of Permanent or Near-Permanent Open Cell Doors

Cell doors in the jail are not in "permanent or near permanent open status by some type of physical means." Although staff are able to keep cell doors unlocked by

¹³ The term "post orders" refers to detailed written instructions provided to the deputies at each post in the jail. They outline all duties and specify the time at which certain activities such as counts should occur.

means of an automatic locking and unlocking system, the amount of time cell doors are open is hardly "permanent or near permanent."¹⁴ By no stretch of the imagination can the non-lockdown policy be equated to a "modified dorm," the term used by Bureau of Adult Detention staff.

According to information provided by jail staff all inmates are required to participate in indoor recreation in a gymnasium five hours per week pursuant to the schedule set forth below. They may not remain in their cells because pod officers must accompany the prisoners to the adjacent gymnasium facilities to provide surveillance during the recreation period. Thus, any prisoners remaining in their cells would be without supervision.

**Mahoning County Jail Housing Unit Recreation Schedule
Effective April 12, 2006**

TIME	SUN.	MON.	TUE	WED.	THUR.	FRI.	SAT.
7:30 am to 8:30 am	NONE	NONE	NONE	S-Pod	NONE	T-Pod	NONE
8:30 am to 9:30 am	U-Pod	G-Pod	G-Pod	U-Pod	NONE	U-Pod	U-Pod
9:30 am to 10:30 am	NONE	R-Pod	U-Pod	G and R Pods	G and R Pods	G and R Pods	R-Pod
1:30 pm to 2:30 pm	NONE	NONE	NONE	NONE	NONE	NONE	NONE
2:30 pm to 3:30 pm	H and P Pods	P and S Pods	H and S Pods	H and P Pods	P and S Pods	H and P Pods	S-Pod
3:30 pm to 4:30 pm	N-Pod	T-Pod	N and T Pods	N-Pod	N, T, H Pods	N-Pod	T-Pod
7:30 pm to 8:30 pm	F-Pod	F-Pod	F-Pod	F-Pod	F-pod	NONE	NONE

¹⁴ The meaning of "physical means" is not altogether clear to me. The electronic locking and unlocking system at the jail permits officers to control ingress and egress. This would not be the case in open dormitories or in open cellblocks where inmates themselves can lock and unlock their doors, sometimes subject to an electronic override.

This schedule indicates that inmates are out of their cells, by policy at least, one hour per day, five hours per week, for indoor recreation. No outdoor recreation has been available for prisoners since January 3, 2004, as jail officials have not yet repaired the security deficiencies they found in the screening around the top perimeter of the outdoor recreation areas adjoining each pod.¹⁵ The defendants have developed with the Bureau of Adult Detention a corrective action plan and have hired an architect to prepare plans for modification of these areas. *First Report of the Special Master*, Exhibit C at ¶38 (April 6, 2005).

I have reviewed post orders for housing unit deputies for each of the two 12-hour posts in each pod to identify scheduled lockdowns of prisoners. See Exhibit 6. These are regular lockdowns that occur on a scheduled basis. The post orders reflect the following for all general population pods:

Scheduled Lockdowns Reflected in Post Orders

Time	Lockdown or Out of Lockdown	Reason
5:00 a.m.	out of lockdown	breakfast following overnight lockdown (see last entry below)
6:30 a.m.	Lockdown	official count ¹⁶
7:30 a.m.	out of lockdown	dayroom activities
12:00 p.m.	Lockdown	officer relief and break
1:00 p.m.	out of lockdown	Dayroom activities ¹⁷

¹⁵ Outdoor recreation areas were closed when staff discovered that prisoners were obtaining contraband by "fishing" through the metal mesh at the top of recreation area walls. Inmate would push string through the mesh openings and persons outside the jail would attach contraband that the inmate could then pull into the recreation area.

¹⁶ This lockdown is not scheduled on the post orders. Captain Lewandowski and I agreed, however, that this is an oversight in the written policy, as all official counts occur when prisoners are locked in their cells.

¹⁷ On Wednesdays and Fridays pod officers pass out commissary. On these days the post orders call for the lockdown to continue through the commissary delivery period, which is to occur "by 1400 hours" (2:00 p.m.).

Time	Lockdown or Out of Lockdown	Reason
6:30 p.m.	Lockdown	official count
7:30 p.m.	out of lockdown	following official count
9:30 p.m.	Lockdown	cells locked until 5:00 a.m.

In summary, the post orders provide that inmates will be allowed to be out of their cells 13.5 hours per day, including hours they must spend in the gymnasium. On two commissary delivery days per week the post orders limit out-of-cell time to 12.5 hours. In addition, post orders for all pod officers indicate that maintenance staff may be in the pod at any time and that all inmates "are to be locked down for the entire time maintenance personnel are on station." Post Orders for Housing Unit Deputies for 12-hour posts (0700 to 1900) at 8. This policy further reduces out-of-cell time for prisoners, although the precise extent of this reduction cannot be calculated on a regular basis for all pods.

I emphasize that the lockdowns described in the post orders I reviewed reflect only scheduled lockdowns. In the *Third Report of the Special Master* filed on May 11, 2005 (Doc. No. 122), I informed the district court that at a meeting on May 5, 2006, the defendants agreed to provide me with "notice of any future lockdown that occurs in the jail, as well as the reason for that lockdown." *Third Report* at 2-3. I have received 42 such reports, the first dated January 13, 2005 and the last dated August 7, 2006.¹⁸ The following chart reflects the date of the reported lockdown, its duration, and the reason given for the lockdown.

¹⁸ I have no explanation for the discontinuation of these reports after early August 2006. A review of pod logs indicates that non-scheduled lockdowns continued after that date.

Unscheduled Lockdown Reports

Date	Pod	Duration	Reason for Lockdown
1/13/2005	S	0730 - 1300	Pod locked down due to medical emergency and investigation. ¹⁹
5/12/2005	H/I	1645 - 1705	The female H/I pod was locked down due to the female Deputy having to report to booking to search and change a new female docket. This Deputy was the only female Deputy on the shift.
5/13/05	All	1225-1400	All pods ordered into lockdown as a result of an inmate breaking a sprinkler head in O pod, Room #18.
5/16/2005	All	1400-2200	All pods ordered into lockdown due to a discrepancy in the inmate count.
5/16/05	All	1743 - 1753	All pods ordered into lockdown as a result of an inmate breaking a sprinkler head in O pod, Cell #13.
5/17/05	All	2000-2130	An inmate told Deputy that @ 1000 hrs. two inmates broke off a piece of metal from the drawers in the Dayroom. A shakedown was ordered due to a possible weapon.
5/18/05	S,T	1430-1530	Searched cells for extra uniforms and cups.
5/18/05	All	2000-2200	Report of possible contraband
5/22/05	All	2000-2200	Prisoners were put in lockdown due to a four (4) alarm fire in a building located approximately 650 feet from the Justice Center.
5/23/05	S,T	1400-2000	Prisoners were put into lockdown due to sanctions imposed from disruptive conduct that was demonstrated during the emergency lockdown that occurred on May 22, 2005 as a result of a fire adjacent to the jail.
5/25/05	P	1400-1400 (24 hrs.)	During the 1400 hr official count P Pod refused to lockdown. Fifteen officers had to respond to lock the pod down. Rule violation was written for twenty-four hour lockdown
6/5/2005	H/I	0915-1045	A verbal confrontation between two (2) inmates was causing serious tension between numerous inmates in the Pod. The deputy working the pod believed a large-scale confrontation was likely to occur. Supervisor explained to inmates that they were being lockdown (<i>sic</i>) for everyone's safety.
6/11/2005	T	1800-2200	Inmates put into lockdown due to rule violation.
6/12/2005	All	1730-1830	Shakedown of entire jail due to suspected contraband.
8/18/2005	T	2000-2050	Shakedown was being conducted of housing unit.
8/18/2005	S	1900-2000	Shakedown was being conducted of housing unit.
8/21/2005	All	1700-1830	Small hole found in visitation window of F/G pod. Shakedown conducted.
8/26/2005	F	0700-0900	Pod locked down due to maintenance repairs being done on a leaking shower.
8/26/2005	T	0730-0950	Pod locked down due to maintenance work being done.
11/12/20005	P	1730-1000	Pod was locked down until investigation was completed on 11/13/05.
11/18/2005	H/I	1445-1610	Pod locked down due to theft of commissary. Inmates were let out of lockdown upon completion of the theft investigation and recovery of the commissary.
11/27/2005	P	0800-1005	Pod locked down during routine cell and pod search.
11/27/2005	H/I	1326-1440	Pod locked down during routine cell and pod search.
11/28/2005	F/G	1300-1500	Pod locked down during routine cell and pod search.
12/2/2005	T	0700-2200	24 hr. lockdown for discipline reasons. Contraband hole found in

¹⁹ The language in all entries in this column is taken directly from the lockdown reports I received.

Date	Pod	Duration	Reason for Lockdown
			visitation window and all inmates refused to clean cells and housing units.
12/10/2005	S	1730-0905	Pod locked down for shakedown.
12/10/2005	T	0730-1010	Pod locked down for shakedown.
12/10/2005	H/I	1300-1420	Pod locked down for shakedown.
12/11/2005	F/G	0730-1030	Pod locked down for shakedown.
12/11/2005	P	0730-1000	Pod locked down for shakedown.
12/11/2005	U	1300-1403	Pod locked down for shakedown.
12/17/2005	U	1300-1350	Pod locked down for shakedown based on a complaint from an inmate.
12/18/2005	All	1228-1645	All pods were locked down due to a power failure.
12/24/2005	T	0730-0845	Pod locked down for shakedown.
12/24/2005	T	1700-2130	Pod locked down for shakedown.
12/25/2005	T	0730-1030	Pod locked down for shakedown.
1/7/2006	U	1715-1900	Pod locked down due to a fight between inmates.
2/1/2006	F	2019-2110	Pod locked down for a shakedown for contraband.
2/2/2006	T	1930-2100	Pod locked down for a shakedown for contraband.
2/12/2006	P	1440-1700	Pod locked down due to a fight between inmates.
2/13/2006	U	0926-1105	Pod locked down due to repairs being made on toilets and a shakedown being conducted.
2/13/2006	All	1900-1953	Pod locked down due to discrepancy in head count.
2/14/2006	P	1320-1830	Shakedown of pod conducted.
2/22/2006	P	2130-2200	Pod lockdown for shakedown.
2/23/2006	S	1930-2200	Pod lockdown for shakedown for contraband.
3/1/2006	H/I	1930-2045	Pod lockdown for shakedown for contraband.
3/14/2006	T	1900-2130	Pod lockdown for shakedown for contraband.
4/6/2006	N/O	1930-2135	Pod lockdown for shakedown for contraband.
4/19/2006	T	1930-2130	Pod lockdown for shakedown and rule violations.
4/30/2006	R	1404-1614	Pod lockdown for shakedown.
5/11/2006	N/O	1930-2045	Pod locked down for routine shakedown.
5/18/2006	F/G	1930-2045	Pod locked down for routine shakedown.
5/18/2006	N/O	2040-2138	Pod locked down for routine shakedown.
6/2/2006	All	1930-2010	Pod locked down due to two (2) inmates breaking sprinkler heads.
6/10/2006	R	1045-1105	Pod locked down due to two (2) inmates fighting.
7/30/2006	All	0700-0754	Pod locked down because fire alarm went off. Inmates were in lockdown from shift change and remained in lockdown until alarm cleared at 0754.
7/31/2006	All	1300-1510	On 7-31-06 at about 1245 hours, the Justice Center elevator went out of service. Subsequently Sergeants R. Minenok ordered all North side Pods locked down until elevator could be serviced. This order was given for the safety and security of the facility.
8/1/2006	All	1900-2000	Entire jail was kept in DBL (double lockdown) after roll call due to the Black Creek computer system not working. Captain Lewandowski notified and Sgt. Fonda was contacted to fix the problem.
8/3/2006	P	0900-1030	P Pod locked down 0900 hours due to shakedown out of lockdown at 1030 hours.
8/5/2006	P	1700-1800	On 8/5/06 at about 1700 hrs., an argument occurred between several inmates in P Pod.
8/7/2006	???	1520-1630	Electrical short on fourth floor

This table makes it clear that unscheduled lockdowns for a number of reasons significantly reduce prisoners' out-of-cell activities. The lockdowns include those for shakedowns (searches of cells for contraband), which do not appear on the post orders for pod officers I described above. The employment of one 5-day recreation officer would permit pod officers to remain in the pods during indoor recreation periods in order to conduct shakedowns with the assistance of floaters and/or supervisors. This would reduce lockdown time significantly and improve the efficacy of shakedowns.

Other non-routine lockdowns occur when one or more inmates violate a rule or confront one another. Several inmates complained to me about the application of "group punishment" when only two or three inmates become involved in a dispute.

In addition to the problems I already have described, selected pod logs for the period August 1 through approximately October 21, 2006, reflect a number of scheduled lockdowns that began earlier and/or ended longer than pod post orders permit.²⁰ In addition, non-scheduled lockdowns further reduced the time inmates had out of their cells, thus interfering with dayroom activities, programs, and other activities. The following discussion summarizes the information in Exhibit 7, 7.1, 7.2, and 7.3

H/I Pod: There were 162 scheduled lockdowns during the time frame the pod logs covered. There were complete data for 44 of the 162 incidents.²¹ From these 44 scheduled lockdowns I calculated a total of 1,944 extra minutes that inmates remained in

²⁰ I reviewed pod logs for H/I, P, T, and U pods for the first and third weeks of each month between October and August 2006.

²¹ By "complete data" I mean both the time the lockdown began and the time it ended.

their cells. This amounts to an average of 44.18 extra minutes per extended scheduled lockdown that inmates had to stay in their cells during these lockdowns.

During the same time frame there were 13 unscheduled lockdowns in H/I Pod. Complete data were available for 7 of the 13 unscheduled lockdowns. From these seven incidents I calculated 243 extra minutes that inmates were in their cells for unscheduled lockdowns. This led to a calculation of 34.71 extra minutes per unscheduled lockdown.

P Pod: There were 157 scheduled lockdowns during the time period for which logs were available. Complete data were available for 53 of these lockdowns. These 53 scheduled lockdowns reflected a total of 2,218 extra minutes, which equals 41.84 extra minutes that inmates were spending in their cells during each extended scheduled lockdown.

There were 12 unscheduled lockdowns as well during this time frame. Complete data were available for five of these lockdowns. These five unscheduled lockdowns consumed a total of 223 minutes. This amounts to an average of 44.6 extra minutes that inmates spent in their cells as a result of each unscheduled lockdowns.

Significantly, there was one very long lockdown that occurred during the period of review. This lockdown lasted 14 hours and 13 minutes. The reason given on the log for this extensive lockdown was "refusal to lockdown."

T Pod: T-Pod had 156 scheduled lockdowns; complete data were available for 68 of these incidents. This amounted to 2,990 minutes of extra time that inmates had spent in their cells. Thus, inmates spent an extra 43.97 minutes in their cells per extended scheduled lockdown.

There also were 20 unscheduled lockdowns in these pods. Complete data were available for 18 of the incidents. From these 18 entries I calculated a total of 777 minutes. Thus, inmates spent an average of 43.16 extra minutes for each unscheduled lockdown.

There was also one very long lockdown in this pod during the time I reviewed the log. This lockdown lasted 22 hours and 45 minutes. According to the log, "Pod was locked down all day due to not locking during a signal 7" (a fight).

U Pod: A total of 167 scheduled lockdowns occurred in this pod during the period for which reviews occurred. Pod logs provided complete data for 71 of these lockdowns. This amounts to a total of 3,078 extra minutes, or 43.35 extra minutes per extended scheduled lockdown that inmates spent in their cells.

There were 11 unscheduled lockdowns in U Pod. Complete data were available for 10 of the 11, amounting to 388 additional minutes. Inmates were locked in their cells an average of 38.8 extra minutes for each unscheduled lockdown.

Jail supervisors, including the warden, either reviewed the lockdown reports I received and approved them or failed to review them in any meaningful way. Either lapse is disturbing because it indicates a serious absence of appropriate supervision of pod officers who should report all non-scheduled lockdowns for submission to me as special master. For more on the subject of staff supervision, *see* Section VII.D, below.

Yet another activity that results in unscheduled lockdowns is the conduct of searches of cells for contraband (shakedowns, in correctional parlance). All lockdowns the defendants reported to me are listed on the table set forth above.²²

6. Maintenance of Sufficient Number of Single-Celled Pods

There are not sufficient cells for prisoners who require segregated status in disciplinary or administrative segregation. There are only 18 such cells for men in O Pod and six such cells for women in I Pod. Inmates in both categories are mixed in these pods, though all cells are single occupancy. Nonetheless, keeping these two categories of inmates in a single pod is an unsound correctional practice. Disciplinary segregation is a short-term (up to 30 days) punitive classification and administrative segregation is a long-term, non-punitive administrative assignment based on a number of factors. These factors include a lack of responsiveness to the disciplinary process that is reflected by numerous misconduct reports, extremely dangerous behavior by prisoners (e.g., assaults on staff or other inmates and escape attempts), the need for protective custody, and others. Because the length of stay of these inmates in administrative segregation status may be indefinite, they should not be subject to the deprivations associated with punitive disciplinary segregation status.

²² The table indicates a serious deficiency in the number of shakedowns. Cell searches occurred very rarely and sporadically. If staff logged and reported to me all non-routine lockdowns, as they are required to do, shakedowns occurred in S Pod only on May 18, 2005 (for extra cups and uniforms), August 18, 2005, December 10, 2005, and February 23, 2005. Likewise shakedowns in T Pod, another unit holding maximum security inmates, occurred only on May 18, 2005 (for extra cups and uniforms only), December 10, 2005, December 24, 2005 (two shakedowns on this pod on that date), December 25, 2005, and April 19, 2006. Shakedowns took place in H/I Pod only on November 27, 2005, December 10, 2005, and March 1, 2006, and shakedowns in P Pod occurred only on November 27, 2005, December 11, 2005, February 12, 2006, February 22, 2006, and August 3, 2006. A shakedown in U Pod occurred only once, on December 11, 2006.

Additionally, as the discussion in section V.C.1, above, indicates, maximum security (*i.e.*, high risk status) prisoners live in a number of double-celled pods throughout the jail. This reflects, among other things, that sufficient numbers of single-celled pods are not available to house these prisoners.²³

7. Summary of Compliance with Variance

In summary, jail officials cannot rely on the variance given by the Bureau of Adult Detention to justify the increase in capacity beyond the design capacity of 432. That number assumes that all cells are available for single occupancy assignments. In making this observation I am not suggesting that the failure to meet Ohio Minimum Jail Standards or to abide by the conditions appended to the variance from those standards by the Bureau of Adult Detention is an adequate substitute for the three-judge court's independent analysis of the constitutionality of conditions in the jail. What I do believe, however, is that the conditions imposed by the Bureau reflect sound correctional judgment that my own experience confirms.

The substantial increase in population the variance permitted carried with it a high risk of harm in the absence of steps taken to ameliorate this risk, particularly through careful classification and assignment, the provision of greatly expanded out-of-cell time, and the maintenance of single occupancy pods to accommodate prisoners who are unsuitable for housing in open pods intended to replicate conditions in an open dormitory. Thus, the defendants' noncompliance with the limitations the Bureau imposed – even standing alone – reflects unacceptable correctional practices that have led

²³ Section VII.A and VII.B, below, deal with classification and assignment and provide additional details regarding the wholesale mixing of maximum security prisoners with others, both in pods and in double occupancy cells.

to the current highly dangerous environment in the jail. I turn now to post-variance population trends that are the predominant cause of the unconstitutional conditions I discuss in later sections of this report.

D. Post-Variance Population Trends

As a result of a failed vote on a ½% sales tax increase on November 2, 2004, the Mahoning County Commissioners revised the level of financial support available to maintain the jail. This resulted in a substantial decrease in security staff, though population numbers remained unaffected. As a result, counsel for the County and for the plaintiff class entered into an agreement that the South Tower would no longer house prisoners, and the defendants closed that unit on April 6, 2005. *Second Report of the Special Master* at 3 (April 19, 2005). *See* Doc. No. 119. The parties further agreed that “the maximum capacity of the North Tower would be 296 prisoners, as follows: S Pod (57), T Pod (57); N/O Pod 36; P Pod (36); F/G Pod (36); H/I Pod (60);²⁴ B/C Pod (14). *First Report of the Special Master* at 4-5 (April 6, 2005). Doc. No. 114 These numbers are the same as those the Bureau of Adult Facilities approved conditionally for pods in the North Tower.

The following table reflects the total count in the North Tower on or about the first and fifteenth day of each month during the first ten months of 2006:

²⁴ The parties designated H/I Pods for medium security men; in fact, it is used now for all classifications of women.

North Tower Population

Date	Population	Over/Under Design Capacity (230)	Over or Under Variance and Agreed Capacity
1/5/2006	283	+53	-13
1/15/2006	296	+66	±0
2/1/2006	275	+45	-21
2/15/2006	290	+60	+6
3/1/2006	282	+52	+14
3/15/2006	284	+54	-12
4/1/2006	297	+67	+1
4/15/2006	312	+82	+16
5/1/2006	312	+82	+16
5/15/2006	326	+96	+30
6/1/2006	292	+62	-4
6/15/2006	286	+56	-10
7/1/2006	280	+50	-16
7/15/2006	284	+54	-12
8/1/2006	285	+55	-11
8/15/2006	288	+58	-8
9/2/2006	302	+72	+6
9/15/2006	306	+76	+10
10/1/2006	304	+74	+8
10/15/2006	318	+88	+22

Although generally within the limit permitted by the Bureau of Adult Detention variance and the agreement of counsel (296), these numbers substantially exceeded the design capacity of the North Tower (216, exclusive of cells in the medical and booking areas).²⁵

As I have pointed out, it is the latter limit that is controlling because of the defendants'

²⁵ Moreover, the number of prisoners in some housing units (e.g., H Pod) substantially exceeded the individual pod limits the parties used to reach the total population number of 296.

consistent noncompliance with the conditions of the variance.²⁶ In particular, mixing of all kinds occurred within pods and within cells. Moreover, out-of-cell time remains far below that which would be appropriate for “modified dorms.”

In addition to making these assignments in the North Tower, the defendants reopened two pods, R and U, in the South Tower, contrary to the parties’ agreement.²⁷ Putting aside the issue of this violation of the parties’ agreement, the conditional variance approved by the Bureau of Adult Detention would have permitted the Sheriff to hold 57 prisoners in each of these pods, for a total of 114.²⁸ Population reports for the first and fifteenth days of each month reflected the following actual populations in open pods in that tower:

South Tower Population

Date	Population	Over/Under Design Capacity (72)	Over/Under Variance Capacity (114)
1/5/2006 ²⁹	63	+27	+6
1/15/2006	67	+31	+10
2/1/2006	107	+35	-7
2/15/2006	111	+39	-3
3/1/2006	114	+42	±0
3/15/2006	124	+52	+10
4/1/2006	129	+57	+15
4/15/2006	125	+53	+11

²⁶ Although the parties’ agreement makes no specific reference to the conditions applicable to the Bureau of Adult Detention variance, the parties’ adoption of population limits for pods in the North Tower identical to those approved conditionally by the Bureau suggests strongly to me that counsel in fact intended that the defendants would meet these conditions.

²⁷ U Pod opened on September 30, 2005 and has been open since that time. R Pod opened on January 20, 2006 and remains open now.

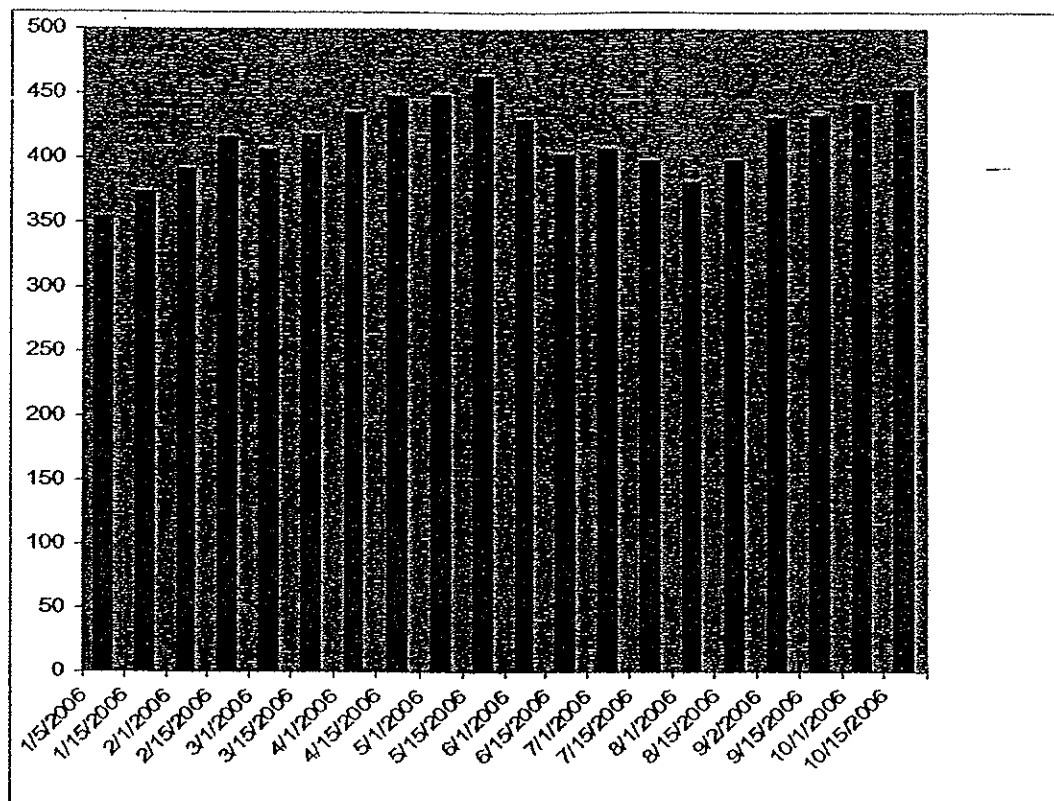
²⁸ The design capacity for each of these pods is 36, for a combined total of 72.

²⁹ Only U Pod was open in the South Tower on January 1 and 15, 2006, as R Pod did not open until January 20 of that year. Therefore, the design capacity was only 36 and the variance capacity was 57 on the first two dates of the chart. Thereafter, design capacity for the two pods was 72 and the combined variance capacity was 114. I do not have population breakdowns by pod following the opening of both pods.

Date	Population	Over/Under Design Capacity (72)	Over/Under Variance Capacity (114)
5/1/2006	127	+55	+13
5/15/2006	130	+58	+16
6/1/2006	130	+58	+16
6/15/2006	109	+37	-5
7/1/2006	118	+56	+4
7/15/2006	107	+35	-7
8/1/2006	91	+19	-23
8/15/2006	100	+28	-14
9/2/2006	121	+49	+7
9/15/2006	117	+45	+3
10/1/2006	125	+53	+11
10/15/2006	123	+51	+9

The combined populations in the North and South Towers have caused the total population of the jail to be consistently higher than reasonable safety and security permit in the absence of compliance with the conditions attached to the Bureau's variance. The defendants failed to assign properly classified prisoners (of minimum or low medium levels) to all pods for which the state granted the variance; the defendants mixed not only the full range of classifications in these pods (including maximum security inmates) but also members of conflicting gangs, prisoners subject to separation orders, prisoners taking psychiatric medications, and prisoners of incompatible ages; the defendants failed to take steps (including the provision of maximum out-of-cell activities and programs) to reduce the tension that inevitably accompanied the growth of population and the resultant use of double occupancy cells. As a result of these acts of commission and omission the defendants have consistently exposed prisoners to a high risk of harm and to conditions of confinement that are entirely inappropriate. The graph below reflects the total population in the jail.

Combined Population of North and South Towers



The highest combined population during this period was 464 and the lowest was 355.

The average population for all occupied pods in the jail was 417.

VI. Classification and Assignment

Booking staff classify inmates upon their admission to the jail. The jail's Directive 609.00, effective January 2003, provides that "violent and non-violent prisoners are not placed in the same cell or unsupervised areas together." See Directive at §3.1.3. It also refers to any special medical or physical needs the prisoner may have, as well as the inmate's prior criminal behavior. *Id.* at §§3.1.4 and 3.1.5. The directive requires booking staff to enter certain information (inmate information, known history, jail risk, and recidivism) into the classification of the computerized inmate booking system; also to

be entered are the inmate's most serious charged offense and previous offenses. *Id.* at §§3.2, 3.4, and 3.5. Section 3.6 requires the booking officer to include the past jail disciplinary history, behavioral history, and propensity for violence in the case of prisoners previously incarcerated in the jail. The computerized classification program (jail management system) then relies on the information that is entered to produce a total classification score, and the booking/classification officer "will then determine a designated housing assignment for the inmate." *Id.* at 3.8. According to Deputy T. Connolly, whom I met on October 14, 2006, he is responsible for the operation of the booking area, and the booking officer on duty during the shift makes the initial classification and pod assignment for each inmate. According to Deputy Connolly, the pod officer makes the decision to assign the inmate to a single or a double occupancy cell.

However rational this process may appear to be on paper, the fact is that little of the required information is available to the booking officer at the time he or she enters data and makes an assignment decision. Computerized records available in the booking area are limited to personal information about the prisoner (e.g., age, race, gender), the current highest offense charged, and prior offenses for inmates who have been booked into the jail in the past. Nothing more is available at the time of booking, initial classification, and assignment regarding the inmate's history of violence, his or her disciplinary record, or other aspects of the inmate's behavior during prior periods of incarceration. As a result, the initial classification is only a crude guess concerning the inmate's likely behavior in the jail, as there is only a limited correlation between an inmate's charges and his subsequent behavior in a correctional setting.

As what about
Risk Assessment
from (divulged
in 2005
or 2006)?

Although staff assigned to Inmate Services Management may review and alter an inmate's classification if future events result in a reduction of the highest charge, this development is not likely to have any effect on the inmate's actual housing. As a result, reclassification has little if any corrective effect on unsound assignment practices in the jail.

VII. Crowding and Mixing

A. Female Prisoners

Unless a female prisoner is assigned to medical housing (four cells) or to I Pod (six cells theoretically available only for women in disciplinary or administrative segregation status), she will go to H Pod. H Pod was constructed to hold 30 prisoners in single occupancy cells. As of October 1, 2006, the pod held 55 inmates, 50 of whom were living in double occupancy cells containing a second bed or a "boat."³⁰ On October 13, 2006, the date of my first visit to H Pod to gather information for this report, there were 57 inmates in H Pod, of whom 54 were living in double-occupancy cells.³¹ Only one was in the medical unit, and the six inmates in I Pod apparently were assigned there for the following reasons: administrative segregation for medical/psychiatric reasons (cell 16); disciplinary segregation (cell 17 and cell 18); unknown (cell 34); presence of lice in hair (cell 35); and overflow (cell 36). Other prisoners who feared contagion for all practical purposes forced the woman who had lice out of the pod.³² The pod officer was

³⁰ A "boat" is a makeshift bed. It has the appearance of a canoe with bedding at the bottom. Some inmates turn their boat over so they can sleep on the outside of the bottom of the makeshift contraption. Many women whom Mr. Glass and I interviewed complained about the extreme discomfort, as well as the degrading nature, of these sleeping arrangements.

³¹ Six female inmates were assigned to the adjoining I Pod on this date.

unable to provide me with information regarding the details of the disciplinary offenses of the two women in disciplinary status in I Pod.

In terms of classification, the female population in H Pod broke down as follows on October 1, 2006. The "active inmate list" for that date provided to me by jail officials identified 56 inmates in H Pod on that date, one more than the daily count sheet for that date showed.³³ Of this number, 38 were classified as minimum security, three were classified as medium security, and 15 were classified as maximum security. These 15 women should have been assigned to a pod holding only maximum security prisoners in single occupancy cells. Thus, it is clear that mixing of dramatically different classifications is rampant in this pod, a factor that contributes directly to an unacceptable level of violence among the female prisoners when they are in the common area or indoor recreation area.³⁴

According to the active inmate list 50 of the 56 prisoners in H Pod were housed in double occupancy cells on October 1. Nine of the 25 double occupancy cells held a maximum security inmate with a minimum security prisoner, an utterly unacceptable and highly dangerous mixing of incompatible classifications within these cells. The potential for violence is obvious, and records of violent behavior such as fights between and

³² The inmate was crying continuously when I spoke with her at her cell in I Pod, and I gained the impression that she was very depressed. When I asked a nurse who was in the H Pod at the time why this prisoner was not assigned to the medical unit, the nurse's response was, "We don't put people in the medical unit because they have lice." From a corrections point of view the nurse, the pod officer, or the latter's supervisor should have sought an examination of the inmate by mental health staff.

³³ The number on the active inmate list includes one woman who was assigned to I Pod on October 1. Jail records frequently treat H/I Pod as one housing unit, although daily count sheets treat each sub-unit as a separate pod..

³⁴ I shall address the subject of inmate violence in a later section of this report.

among women establish that physical violence is real, not merely threatened, by the wholesale mixing of women of every stripe in a single housing unit.

B. Male Prisoners

The following tables provide similar information regarding the male population housed in the jail.³⁵ The tables reflect maximum security inmates who were mis-housed in pods to which men are assigned at the jail. No inmate appears on more than one of these tables.

Maximum Security Inmates Double-Celled With Minimum Security Inmates (8)

Jail ID #	Pod of Assignment	Cell #
2835	F	9
7623	R	26
36585	S	2
428	S	3B
28095	S	23
6885	U	21
1847	U	24
5383	U	26B

Maximum Security Inmates Housed in a Minimum or Medium Security Pod (11)

Jail ID #	Pod of Assignment	Cell #
3554	F	21
30469	G	12
116	R	12
2685	S	9B
39697	S	27
33156	U	1
4642	U	14
13081	U	14B

³⁵ These data appear on the active inmate list. There is a minor discrepancy between the number of inmates in R Pod: 63 according to the active inmate list and 61 according to the October 1, 2006 count sheet.

Jail ID #	Pod of Assignment	Cell #
2840	U	19
7470	U	25
23993	U	35B

Maximum Security Inmates Double Celled in Maximum Security Pod (30)

Jail ID #	Pod of Assignment	Cell #
356463	P	3
11723	P	6
22492	9	13
8402	P	16
27733	P	17
32202	P	25
35733	T	1B
28226	T	3B
39916	T	4B
39677	T	5B
39460	T	8B
773	T	9B
742	T	11B
2221	T	12B
25936	T	14B
17467	T	15B
34842	T	16B
36605	T	17B
30834	T	18B
27667	T	20B
22368	T	21B
18558	T	23B
39664	T	25B
39588	T	26B
33876	T	27B
40024	T	28B
2840	T	30B
27224	T	33B
38843	T	34B
1899	T	35B

Maximum Security Assigned with Lower Security Inmates in N Pod (9)³⁶

Jail ID #	Pod of Assignment	Cell #
6717	N	1
34487	N	3
38721	N	4
5649	N	7
36948	N	8
31916	N	9
33134	N	19
787	N	26
39220	N	27

The extensive overpopulation and/or mixing of classifications in a number of the men's pods reflected above (especially P, S, T, R, and U pods) is extremely dangerous. A total of 58 male inmates should have been moved to other pods because they were assigned to an improperly mixed pod and/or because they were improperly housed in double occupancy cells.

In assessing the dangers that mixing maximum security inmates with others creates, one must keep in mind that only one deputy is responsible for providing surveillance to all prisoners in a pod. Pod officers cannot maintain line of sight supervision of cellmates when they are locked in their cells. When most or all prisoners are in the dayroom area, adequate oversight likewise is impossible because of the crowded condition of the area. The same is true when all inmates from a pod are required to go into the gymnasium. If outdoor recreation areas were available, it would be impossible for pod officers to provide appropriate surveillance to prisoners in those areas while supervising other prisoners in their cells or in the dayroom.

³⁶ Many inmates in N Pod are taking psychotropic medications. Unlike those in O Pod (disciplinary and administrative segregation), however, prisoners in N Pod engage in congregate out-of-cell activities, which make mixing in the pod more dangerous.

Yet another difficulty arises in split pods such as H/I Pod, where one officer must provide security control over exceptionally crowded H Pod while maintaining reasonable contact with highly problematic prisoners in I Pod, who are separated from H Pod by a concrete block and glass wall and a locked door. Similar, though somewhat different surveillance difficulties affect N and O pods, where one deputy must deal with seriously mentally ill prisoners as well as inmates in disciplinary segregation or administrative segregation in separate pods.³⁷

C. Mixing of Members of Different Gangs

There are a number of gangs represented in the population of the jail. Some of these are local Youngstown gangs, and others are affiliated with national gangs (e.g., Bloods and Crips). The all-inmates report to which I have referred earlier in this report identifies the number of inmates of different gangs housed in the same pod. An asterisk by the jail identification numbers indicates that members of different gangs are double-celled in the same cell.

Inmates and Gang Affiliations

Jail ID #	Pod	Gang Affiliation
31180	0	Cash Money Cousins
34779	0	5150 Bloods
355	P	Dale Boyz
13578	P	Down the Hill Crips
32202*	P	Dragons
33247*	P	Krian D.S.C.
8020	P	Cash Money Cousins
34845	P	South Side Solja
30099	P	FLA Boyz
35126	R	Dale Boyz and Labell Boyz

³⁷ N/O Pod is split down the middle by a concrete block wall with no glass. Each side contains 18 cells, 9 up and 9 down. There is a control booth at the end of the pod that serves as the staff post for both sides.

Jail ID #	Pod	Gang Affiliation
12154	R	400 Block Crips
9115	R	IGC Crips and Down the Hill Crips
11575	R	Bloods
29820	S	Dragons
6081	S	Cash Money Cousins
1833	S	187 Soldiers
22688*	S	Quinn Street Crew QSC
19144*	S	Maniac Latin Disciples
39492	S	400 Block Crips & 59 Hoover Crips
1252	T	JSY
38058	T	Folks
33800	T	Tank Dogs
22386	T	5150 Bloods
13309	T	FLA Boyz
35406	T	Dale Boyz
27244	T	Tank Boyz
17659	U	West Side Mob
31526	U	T.B.C.
11964*	U	Folks
24014*	U	Valley Low Bloods
1002	U	Cash Money Cousins
1847	U	187 Soldiers/DLB
7470	U	Dale Boyz & South Side Solja
36194	U	South Side Solja
32406	U	BGD Folks
37853	U	Dale Boyz

I have not been able to make a thorough study of the extent of the gang problem at the jail. I do not know how members are identified, though I know that a procedure is in place to accomplish such identifications. The absence of some gang organizations, *e.g.*, the Aryan-Brotherhood, that have been present in virtually all correctional facilities with which I am familiar, raises a doubt in my mind that a comprehensive identification occurs. Most important, I cannot assess which gangs are incompatible, though some of the organizations in the jail in my experience are adversarial, *e.g.*, Bloods and Crips.

These limitations notwithstanding, the overall chaos in assignments of inmates throughout the jail leads me to conclude that little if any consideration has been given to the dangers that may be involved in the mixing of members of different gangs, whether by pod or by cell.

D. Mixing of Prisoners Subject to Separation Orders

Some inmates in the jail cannot be together because of factors other than normal classification criteria. They may be enemies as a result of conflicts in the jail or on the street; they may be co-defendants; or they may be relatives of victims of other inmates. These inmates are subject to "separation orders" placed on them by jail staff or, in some instances, by judges.

Jail staff provided me with a list of prisoners ("known rivals") subject to separation orders as of October 5, 2006. Checking pod assignments reflected on that list against those in place on October 1, 2006, I noted that a number of prisoners were housed on that date in pods other than those reflected on the separation list. I have used October 1 data to identify pods of assignment. This methodology will lead to errors only if the separation orders in these cases were issued between October 1 and October 5.

The following chart reflects inmates subject to separation orders who were housed in the same pod:

Mixing of Prisoners With Separation Orders

Booking Numbers	Pod of Assignment
2005003897 and 2005006227	O Pod
2005003941 and 2006003787	P Pod ³⁸
2006000142 and 2006003787	P Pod ³⁹

³⁸ The second inmate was shown as being assigned to S Pod on the separation list the defendants provided.

³⁹ The second inmate was shown as being assigned to S Pod on the separation list the defendants provided.

Booking Numbers	Pod of Assignment
2006000779 and 2006003787	P Pod ⁴⁰
2006002581 and 2006005401	T Pod
2006003787 and 2005003941	P Pod
2006003787 and 2005006163	P Pod
2006004477 and 2006004502	P Pod
2006005401 and 2006002581	T Pod
2005005778 and 2006006035	P Pod

Given the small number of separation orders in effect, it is difficult for me to understand why jail officials could not maintain these inmates in separate pods.

E Mixing of Prisoners on Psychiatric Medications

Exhibit 8 lists all prisoners identified by jail staff as being on regimens of psychotropic medications. The exhibit reflects that these prisoners are spread in mixed fashion throughout all pods in the jail. The reader will recall that N Pod is designated for housing male prisoners with special needs (primarily mental health issues). All prisoners in this pod are housed in single-occupancy cells.

I am not qualified to make any psychiatric judgment regarding the mixed assignments of these prisoners. Since H Pod is the only pod available for women, it would surprise me if all 16 of the inmates in that pod on psychotropic medication are suitable for mixing by pod and/or by cell. Moreover, any consideration being given to the medical or security implications of this facet of mixing would be exceptional, given the extent of mixing with different classifications, gang affiliations, and separation orders throughout the jail.

⁴⁰ The second inmate was shown as being assigned to S Pod on the separation list the defendants provided.

F. Mixing and Age

One factor that correctional officials should take into account in assigning prisoners, particularly to double occupancy cells, is age. Prisoners tend to respond better to living with a person of their own approximate age. Young, strong inmates may take advantage of older, weaker prisoners. Older men and women frequently seek respite from the noise and commotion accompanying living with a virtual teenager. Differences in preferences among younger and older inmates regarding television programs and music can be a source of serious tension and dissatisfaction among inmates housed in the same pod or the same cell.

I did not review this issue on a jail-wide basis, as data were not available. During our interviews of prisoners, however, Mr. Glass and I noted the ages of cellmates we interviewed. We found substantial age variations among both women and men.

Age Differences Between Cellmates

Age of Cellmate 1	Age of Cellmate 2	Age Differential
45	29	16 years
47	21	26 years
34	19	15 years
56	23	33 years
60	29	31 years
37	22	19 years
51	20	31 years
42	25	17 years
54	32	22 years
52	18	34 years
34	19	15 years

Assignments of this kind, as well as the more serious examples of inappropriate double celling, suggest that cell assignments should not be the sole responsibility of pod officers.

At a minimum, age guidelines should be developed and followed whenever possible to avoid the unnecessary mixing of older and younger prisoners.

G. Prisoners' Responses to Crowding and Mixing

When Mr. Glass and I met with prisoners in H/I Pod and T Pod, we encountered a barrage of complaints by inmates in those housing units. I am accustomed to hearing inmates complain -- often in an exaggerated fashion -- about the conditions of their confinement. The number of complaints we heard, however, was extraordinary, and the opinions expressed were almost unanimous. Moreover, my tour of those pods, as well as the information I developed from other sources to prepare this report, corroborated many of the inmates' complaints.

I was impressed by the fact that inmates did not respond negatively to all the questions I asked during interviews. For example, almost all prisoners agreed that water in showers was hot and that intercoms were in working order. This factor increased my confidence in the credibility of negative remarks I heard about other issues.

Women in H unit complained that they are "sleeping on top of each other." The boats are uncomfortable and women sleeping on the floor "feel like animals." A near-universal complaint was that the noise level in the dayroom was "out of control," leading to arguments, fights, and consequent lockdowns. Some inmates told me that much behavior goes unobserved because pod officers cannot see all the prisoners in the dayroom or in their cells.

Female prisoners acknowledged that there are illegal drugs in the pod and that prescription drugs distributed by nurses are traded or shared. Complaints about toilets and other maintenance issues were frequent, and my tour confirmed the accuracy of many

of these complaints. Prisoners came back time and again to the effects of crowding, which lead to "fights over minor stuff" and to expressions of racism. Simple things like not being able to sit at a table during meals and having to balance a tray on one's lap are examples of irritants that contribute to the atmosphere of general tension.

Men in T Pod told me that there is a great deal of theft of property from cells. A major cause of this problem is the fact that prisoners can enter each other's empty cells during the time inmates are out of their cells. I confirmed this by watching one inmate walk into another's empty cell, remain for a few moments, and exit the cell. Tension over small matters, for example competition over food trays and limited seating for meals, leads to tension and fighting. One prisoner described the noise level in T Pod as "sounding like a loud pig in a sink." One man almost exploded with a litany of complaints: "There's no outside rec, no fresh air ... there's not enough time outside to get away from the other person in your cell ... hearing on the phone is impossible, it's just too crowded. We fight because we're crowded."

Environmental conditions were the subjects of many complaints. Non-working toilets, the odor of sewage coming from sinks (something I confirmed personally), and the presence of bugs were among these complaints. Inmate after inmate complained about arguments or fights over use of the microwave, noise in the pod, the scarcity of toilet paper, tension, mixing of classifications, and frequent and lengthy lockdowns.

This description fails to do justice to the anger and frustration I heard from inmates in these two pods. I include these excerpts from interviews to remind the reader that the conditions in the jail I have described are not abstract or impersonal matters; they affect human beings who, under the best of circumstances, are going through a stressful

period in their lives – particularly the vast majority who are awaiting trial on criminal charges. Not only is the addition of unnecessary tension and frustration unsound correctional practice, it also is cruel. More than one prisoner in each of these pods cried or choked up while speaking with me.

H. Summary of Discussion of Classification and Assignment

Without question, classification is the foundation of all security within a correctional setting. Though proper architectural design, trained staff, and other factors contribute as well to a secure facility, the classification and proper assignment of prisoners is a *sine qua non* for dealing with dangerous inmates and protecting victims from predators within the jail. Not only is the system in use at the jail essentially based on a single factor – highest crime or charge – actual assignments to pods and to double occupancy cells overcomes any advantage the classification system might offer.

In addition to security factors affecting classification, other special needs must be met through the classification and assignment of prisoners. These include gang membership, separation orders, mental health and medical needs, and age. As this report has demonstrated, none of these factors is used consistently to determine proper pod assignments; indeed, in some instances, it does not even lead to defensible cellmate assignments in double occupancy cells.

The extent of mixing of incompatibly classified female inmates in H Pod is extremely dangerous. There is for all practical purposes no effort through classification to control and protect women in the jail. And no one should assume that women in jail are not dangerous and violent simply by virtue of their gender. To the contrary, this population includes the full gamut of violent offenders, including murderers, armed

robbers, and sex offenders; it also includes women who behave violently toward other inmates and toward staff. Wholesale mixing of classifications, both in the pod and within double occupancy cells, is inconsistent with any reasonable conception of sound correctional theory.

Although the extent of mixing of inmates of different classifications (particularly minimum with maximum) is less prevalent in men's units than it is in the only women's pod, any such mixed assignments in the men's pods present a potential danger to inmates and staff alike. This also is true in those instances in which minimum and maximum security male prisoners are housed with each other; likewise, the assignment of prisoners in different gangs to share a cell, unless extremely carefully supervised on a case-by-case basis, may present a significant danger.

The failure to separate male prisoners subject to separation orders is altogether indefensible, and the housing of prisoners on psychiatric medication with those not requiring such medications is highly suspect. Even the easily observed factor of age plays no consistent role in the assignment of cellmates in double occupancy cells.

In summary, the jail's population is almost entirely unstratified by classification based on factors relied on virtually universally to separate prisoners by likely behavior and by needs. In my experience and opinion, there can be no more dangerous state of affairs in a correctional setting. Let me add, however, that it is overwhelming crowding, not – in my opinion – lack of concern by jail officials that renders proper assignments of inmates and stratification of pods impossible.

VIII. Crowding and Staffing

A. Staffing Levels

I obtained information regarding staffing by supervisory officers and pod deputies for the 1st, 10th, and 30th days of each month from January through August 2006. The documents I received from jail staff and have attached as Exhibit 9 reflect that one officer was assigned to each of the following pods or combination of pods on the 12-hour day shift and the 12-hour night shift: A (booking), B/C (medical housing for males and women), F/G (male trustees and male minimum/medium); H/I (women and female segregation); N/O male segregation and mental health); P (male maximum); S (male minimum/medium) T (male maximum), R (male medium), and U (male medium). The number of "floaters" available to respond to problems in the jail ranged from a low of two and a high of eight during the day shift and from a low of one to a high of nine during the night shift.⁴¹ On average, there were approximately five floaters on duty during the day shift and approximately four floaters on duty during the night shift on the days I sampled. According to the sergeant who accompanied me, one of these floaters – when available – is assigned to each of the three floors of the jail on which housing units are located.

A sergeant who accompanied me during my tour informed me that 17 deputies comprised the absolute minimum for staffing the day shift (nine for pods, one for booking, one for intake, one for property, two for central control, and three floaters).

⁴¹ "Floater" is a term in correctional parlance describing an officer assigned to back-up functions. He or she may assist housing unit officers with counts, may transport prisoners to appointments in the jail, and will be responsible for responding to alarms indicating fights or possible injury to staff.

According to the sergeant, 16 deputies reflect the minimum number needed during the night shift.

Pod officers are supposed to be supervised by at least one and sometimes two sergeants both on the day shift and on the night shift. In addition, there are five-day posts for one captain and one lieutenant during each of these two shifts. I shall discuss the extent of actual supervision below.

When I observed H Pod and T Pod during open pod hours on my October 12-14, 2006 tour of the jail, I concluded that it was impossible for the pod officer to provide minimally adequate surveillance of inmates when inmates are out of their cells for congregate activity in the dayroom. A prisoner is able to enter another inmate's empty cell and steal property without detection by the pod officer. This may occur when the empty cell is unlocked or locked. Several inmates told Mr. Glass and me that an inmate could simply yell, "Pop 14" (open cell 14) and the pod officer would open the cell without verifying the identity of the inmate seeking admission. A group of inmates could easily cooperate to block a pod officer's view of a cell to provide cover for the entering prisoner. Inmates reported thefts of property, and Mr. Glass and I observed several inmates entering other prisoners' cells during our tour.

As I have indicated earlier in this report, inmates almost uniformly reported noise levels that were overwhelming, as well as fights and arguments over getting in lines for medications, food trays, and the microwave. Conflicts also arise over seating during meals in large, crowded pods (e.g., H, S, and T), where there are only nine tables and 36 permanent seats for inmates to use when they eat. Other prisoners must stand, return to their cells (an unsanitary practice), or sit on unanchored plastic chairs available for extra

seating.⁴² All of these factors contribute to an atmosphere of general pandemonium that creates unacceptably high levels of tension among inmates, distracts officers, and prevents appropriate surveillance. Staff who accompanied me, as well as others with whom I spoke in the pods, agreed that crowded conditions in the pod made even reasonably adequate surveillance virtually impossible. Indeed, one sergeant expressed the opinion that only divine intervention had prevented a major catastrophe in an atmosphere described by a pod officer as "guys on top of guys." The level of crowding that exists in the jail, even with appropriate staffing, compromises the safety of inmates and staff alike. I have reviewed three evaluations of the necessary level of security staffing in the jail. When one takes into account the shift from three 8-hour shifts to two 12-hour shifts, it appears that all three evaluators agreed in the main that the staffing plan in place at the jail at this time would be appropriate with respect to the coverage of single-celled housing units.⁴³ Crowding throughout the facility, however, would defeat the objective of even the richest staffing allocation in the jail: the maintenance of a safe and secure environment for inmates and staff.

⁴² The original design of the pod included only tables and chairs bolted to the concrete floor. The use of unsecured chairs compromises the security design of the pod. During a fight or a general disturbance inmates have access to loose chairs to use as weapons.

⁴³ The collective bargaining agreement between the Sheriff's Department and the Fraternal Order of Police Ohio Labor Council, Inc., effective January 1, 2006 through December 31, 2008, provides for two 12-hour shifts in place of three 8-hour shifts. A deputy, including one responsible for supervising a housing pod, now works three 12-hour shifts (for a total of 36 hours) and one 8-hour shift every other week (bringing total working hours to an average of 40 per week). Pod officers are on duty 24 hours per day, though one pod officer continues to be responsible for each of the split pods. There is severe crowding in H pod, which I believe compromises surveillance of the adjoining I pod. Less significant crowding exists in F/G pods.

One result of the switch to 12-hour shifts is that officers on every-other-week, 8-hour shifts frequently are held over for an additional four hours. This accounts for most of the overtime worked by deputies and support staff in the jail, an average of 320 hours per two-week pay period from January 22 to September 2, 2006. See Exhibit 10.

B. Earlier Reports Regarding Staffing Levels

The security staffing in pods of the jail is equivalent to that projected for the jail with its intended design capacity of 432 at the time of construction. Then-Commander James Lewandowski prepared a letter on August 14, 1992 to Michael Lee of the Ohio Department of Rehabilitation & Correction. See Exhibit 11. That letter projected staffing in each pod as follows: one pod officer (including split pods) during the day shift, one pod officer during the afternoon shift, and 0.5 officers during the midnight shift. Each of these was an 8-hour shift.⁴⁴ The proposed staffing pattern also included one pod relief and backup deputy for each of the three housing floors of the jail. Each shift schedule included a sergeant to supervise the pods, as well as a shift commander during the day and a lieutenant during the afternoon.

In addition to the pod officers and relief/backup deputies, nine additional deputies were allocated to internal movement, and two inmate recreation officers were scheduled to move from pod to pod during recreation hours. In particular, the inmate recreation officers provided support for pod officers when inmates went to the gym or the then-functioning indoor recreation area for the pod. Because these recreation officer positions no longer exist, all inmates are required to leave their cells and go to the gymnasium for indoor recreation. Mandatory group recreation is undesirable, as some inmates are afraid to be involved in large group activity in the gymnasium and others may not feel that they benefit from participation. When I observed one recreation period, there was one basketball game underway, and some inmates were engaged in working out with weight

⁴⁴ As noted above, the jail subsequently moved to two 12-hour shifts, eliminating the midnight shift.

machines. Most other inmates were standing around or sitting on the floor of the gym.

Recommended levels of staffing for housing units in subsequent evaluations were essentially the same as those that then-Commander Lewandowski described. A study and set of recommendations submitted to plaintiffs' counsel by Gerry D. Billy of Billy & Associates on April 31, 1998 proposed the following staffing pattern for pods: one deputy for each pod during the day and afternoon shifts, and one deputy for two pods during the midnight shifts. All recommended positions were 7-day posts. In addition, the Billy report recommended a floating (back-up) deputy for each floor containing pods (2nd, 4th, and 6th). *See Exhibit 12 at 61-62.*

A later May 2004 staffing plan submitted by Robert B. Pace of Management Confinement made yet another set of recommendations regarding pod assignments and floaters (referred to as "transfer/movement" positions). Mr. Pace's recommendations were similar to but not identical with those described above with one significant exception. His plan called for one officer on each of three shifts in housing areas that contain split pods separated by a wall with a concrete block and glass window permitting some degree of visual surveillance of the smaller pod from the larger of the two: D/E pods, H/I pods, and J/K pods. He made the same recommendation for F/G and N/O pods, which have essentially the same configuration as the large 36-prisoner pods (e.g., S and T), but are split down the middle by a solid wall with one control station to permit surveillance of both sides of the split pod. Otherwise, Mr. Pace's staffing pattern for pod officers and transfer/movement officers is consistent with earlier recommended patterns. *See Exhibit 13 at 25-29.*

I believe that Mr. Pace's addition of staff to split pods reflects the better part of wisdom. Nonetheless, the degree of concurrence that exists among experienced corrections practitioners indicates that the fundamental problem in the operation of housing units within the jail is not the paucity of staff; rather, it is the surplus of inmates. The extent of crowding is such that no rational staffing pattern could provide the level of safety and security that is required.

C. Staff Training

According to staff training records provided by jail officials, a total of 36 security personnel (11 deputies and 25 cadets) have not completed the 136-hour basic corrections academy training conducted by the Ohio Police Officers Training Academy ("OPATA"). Of this number, six deputies have been employed for more than one year, which is the outer limit established by the Minimum Standards for Jails in Ohio (Minimum Jail Standards) for receiving this training.⁴⁵ An additional 5 deputies and 25 cadets are still within their first year of employment. All jail staff who have not completed OPOTA training, both those identified as "Deputy 1" and those identified as "Cadet," appear on the list of staff assigned to the jail effective September 17, 2006.⁴⁶

Although most of these staff are within the one-year allowance established by the Minimum Jail Standards, that circumstance does not alter the fact that these staff are

⁴⁵ The Bureau of Adult Detention of the Ohio Department of Rehabilitation & Correction issues and monitors compliance with these standards.

⁴⁶ A "cadet" is a deputy on probationary status. He or she may be assigned to any post, including those in pods.

essentially untrained.⁴⁷ To the extent they are assigned to inmate-contact positions such as pod officers, their lack of training increases the dangers posed by overcrowded pods in the jail.

Jail officials also provided me with a summary indicating that almost all staff (96 of 115) received 24 hours of in-service training during 2006. A reasonable rationale, e.g., military activation, disability leave, or some other acceptable excuse, explained the 15 instances in which staff had not completed in-service training for that year.

According to the response to my first document request seven sergeants, six of whom work in the jail, have not attended required supervisory training. All of these sergeants were promoted on September 21, 2003, more than three years ago. According to jail officials these sergeants are enrolled in a 40-hour, 5-day Basic Corrections Supervision and Management School scheduled for on November 13-17, 2006, at which time sergeants who participated will have met the training requirement established by the Minimum Jail Standards for new jail supervisors.

The ability to provide any pre-service and in-service training for deputies is a direct result of an agreement reached by jail officials and the union representing jail deputies. The "Addendum to Article 10 Training Time" in the Fraternal Order of Police collective bargaining agreement provides that deputies will complete the 24-hour in-service training requirements for 2006, any needed pre-service OPOTA training, and any

⁴⁷ The Standards also require that correctional officers receive "training in jail policies and procedure within sixty days of employment." *Standards* at 20. The information I received from jail officials about this training is that it is provided on a very informal and unstructured basis by supervisory staff during the course of a new employee's tenure in the jail. No records of this training are available. Given that this is the only training new staff are likely to receive during their first year of employment, there should be greater assurance that newly hired officers at least are well-acquainted with relevant policies and procedures.

required supervisory training without cost to the Sheriff's Department beyond a one-time payment of \$500. to each employee who completes his or her required training. The addendum applies only to training for calendar year 2006, and the purpose of the addendum was "to accelerate the compliance with *Nathaniel Roberts, et al., vs. County of Mahoning, United States District Court, Northern District of Ohio* Case No. 4:03 CV 2329." Thus, future training requirements will be dependent on additional sources of financial support. The continuation of excessive crowding in pods throughout the jail will exacerbate the dangers resulting from any future failures or delays in providing the full range of training to all employees in a timely manner.

D. Supervision of Line Staff

Staff assigned to pods or other areas of the jail (including floaters) receive virtually no supervision from lieutenants or captains and very little from sergeants. This is particularly troublesome in view of the number of inmates to be supervised and the lack of training officers receive during their first year of employment.

I reviewed pod logs for H/I, P, T, and U Pods for several weeks in August, September, and October 2006. The following table identifies the presence of supervisory staff in each of these pods on each date for which I reviewed pod logs.

Presence of Supervisory Personnel in Pods

Pod	Date	Supervisory Staff Present in Pod	Duration of Stay
H/I	8/1/06	Sergeant Minenok	4 minutes
		Sergeant Beshara	Time illegible
		Captain Tabachino	Time illegible
		Sergeant Szekely	Time out not noted
H/I	8/2/06	Sergeant Bonace	1 minute
H/I	8/3/06	Sergeant Wollet	Time out not noted
		Warden Santamas	8 minutes
		Captain Tabachino	8 minutes
		Sergeant Kountz	8 minutes

Pod	Date	Supervisory Staff Present in Pod	Duration of Stay
H/I	8/4/06	None	---
H/I	8/5/06	None	---
H/I	8/6/06	None	---
H/I	8/7/06	Sergeant Szekely	5 minutes
H/I	8/15/06	Sergeant Yurco Sergeant McGeary	8 minutes 8 minutes
H/I	8/16/06	None	---
H/I	8/17/06	None	---
H/I	8/18/06	Sergeant Wollet	Time out not noted
H/I	8/19/06	None	---
H/I	8/20/06	Sergeant Minenok	Time out not noted
H/I	8/21/06	Sergeant Szekely	5 minutes
H/I	9/1/06	Sergeant Yurco	Time out not noted
H/I	9/2/06	None	---
H/I	9/3/06	Sergeant Szekely	8 minutes
H/I	9/4/06	Sergeant Szekely	Time out not noted
H/I	9/5/06	Sergeant Beshara Sergeant McGeary Sergeant Yurco	Time out not noted 14 minutes 14 minutes
H/I	9/6/06	None	---
H/I	9/7/06	None	---
H/I	9/15/06	Sergeant Yurco Warden Santamas	Time out not noted Time out not noted
H/I	9/16/06	None	---
H/I	9/17/06	None	---
H/I	9/18/06	Sergeant Minenok Sergeant Beshara Captain Tabachino Sergeant Minenok	Time out not noted 3 minutes 3 minutes 1 minute
H/I	9/19/06	Sergeant McGeary	10 minutes
H/I	9/20/06	Sergeant McGeary	Time out not noted
H/I	9/21/06	None	---
H/I	10/1/06	Sergeant Minenok	1 minute
H/I	10/2/06	Sergeant Szekely Sergeant McGeary	3 minutes 12 minutes
H/I	10/3/06	Sergeant McGeary	5 minutes
H/I	10/4/06	None	---
H/I	10/5/06	Sergeant McGeary Sergeant Szekely	25 minutes Time out not noted
H/I	10/6/06	None	---
H/I	10/7/06	Sergeant Szekely	Time out not noted
H/I	10/15/06	Sergeant Szekely Sergeant Szekely	Time out not noted 1 minute

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Pod	Date	Supervisory Staff Present in Pod	Duration of Stay
H/I	10/16/06	None	---
H/I	10/17/06	Sergeant McGeary	Time out not noted
H/I	10/18/06	Sergeant McGeary	Time out not noted
H/I	10/19/06	None	---
H/I	10/20/06	Sergeant Yurko	1 minute
H/I	10/21/06	None	---
P	8/1/06	Sergeant Szekely Sergeant Szekely Sergeant Szekely	Time out not noted Time out not noted Time out not noted
P	8/2/06	None	---
P	8/3/06	Sergeant Kountz	5 minutes
P	8/4/06	None	---
P	8/5/06	Sergeant Minenok	Time out not noted
P	8/6/06	Sergeant Minenok Sergeant McGeary	Time out not noted Time out not noted
P	8/7/06	Sergeant Szekely Sergeant Minenok	Time out not noted Time out not noted
P	8/15/06	Sergeant Minenok Sergeant McGeary	Time out not noted Time out not noted
P	8/16/06	None	---
P	8/17/06	Sergeant Bonace	Time out not noted
P	8/18/06	Sergeant Wollet	23 minutes
P	8/19/06	Sergeant Wollet Sergeant Minenok Sergeant Szekely	Time out not noted 4 minutes 4 minutes
P	8/20/06	Sergeant Szekely	Time out not noted
P	8/21/06	Sergeant Minenok Sergeant Minenok Sergeant Minenok	Time out not noted Time out not noted Time out not noted
P	9/1/06	None	---
P	9/2/06	Sergeant Minenok	Time out not noted
P	9/3/06	Sergeant Szekely Sergeant Minenok	10 minutes Time out not noted
P	9/4/06	Sergeant Minenok Sergeant Szekely	Time out not noted Time out not noted
P	9/5/06	Sergeant McGeary	Time out not noted
P	9/6/06	Sergeant McGeary	Time out not noted
P	9/7/06	Sergeant Yurko	23 minutes
P	9/15/06	None	---
P	9/16/06	None	---
P	9/17/06	Sergeant Minenok	Time out not noted
P	9/18/06	Sergeant Minenok	2 minutes
P	9/19/06	Sergeant McGeary Sergeant McGeary	Time out not noted Time out not noted

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Pod	Date	Supervisory Staff Present in Pod	Duration of Stay
P	9/20/06	None	---
P	9/20/06	None	---
P	10/1/06	Sergeant Minenok Sergeant Minenok Sergeant Szekely	4 minutes 4 minutes 44 minutes
P	10/2/06	Sergeant Szekely	4 minutes
P	10/3/06	Sergeant McGeary	Time out not noted
P	10/4/06	None	---
P	10/5/06	Sergeant Szekely	Time out not noted
P	10/6/06	Sergeant Stewart Sergeant Bonace Lieutenant Masto	5 minutes 11 minutes 11 minutes
P	10/7/06	Sergeant Szekely	Time out not noted
P	10/15/06	Sergeant Szekely Sergeant Minenok Sergeant Szekely	60 minutes Time out not noted Time out not noted
P	10/16/06	Warden Santamas Sergeant Kountz Sergeant McGeary	3 minutes 3 minutes 12 minutes
P	10/17/06	None	---
P	10/18/06	Sergeant McGeary	Time out not noted
P	10/19/06	Sergeant Wollet	Time out not noted
P	10/20/06	Sergeant Yurko	1 minute
P	10/21/06	None	---
T	8/1/06	Sergeant Beshara Captain Tabachino	Time out not noted Time out not noted
T	8/2/06	Sergeant Szekely	15 minutes
T	8/3/06	Sergeant Wollet	20 minutes
T	8/4/06	None	---
T	8/5/06	Sergeant Wollet	19 minutes
T	8/6/06	Sergeant Minenok	Time out not noted
T	8/7/06	Sergeant Szekely Sergeant Minenok	Time out not noted Time out not noted
T	8/15/06	Sergeant McGeary	43 minutes
T	8/16/06	None	---
T	8/17/06	None	---
T	8/18/06	None	---
T	8/19/06	Sergeant Minenok Sergeant Szekely	Time out not noted Time out not noted
T	8/20/06	Sergeant Minenok Sergeant Szekely	Time out not noted Time out not noted
T	8/21/06	Sergeant Minenok Sergeant Szekely	Time out not noted Time out not noted
T	9/1/06	None	---

* Report of the Court's Expert Witness

* December 3, 2006

Pod	Date	Supervisory Staff Present in Pod	Duration of Stay
T	9/2/06	None	---
T	9/3/06	Sergeant Szekely Sergeant Minenok	7 minutes 5 minutes
T	9/4/06	Sergeant Minenok	6 minutes
T	9/5/06	None	---
T	9/6/06	Sergeant McGeary Sergeant McGeary	28 minutes Time out not noted
T	9/7/06	None	---
T	9/15/06	Sergeant Yurco	1 minute
T	9/16/06	Sergeant Minenok	Time out not noted
T	9/17/06	Sergeant Minenok	Time out not noted
T	9/18/06	Sergeant Minenok Sergeant Kountz	Time out not noted 13 minutes
T	9/19/06	Sergeant McGeary Sergeant McGeary	Time out not noted 1 minute
T	9/20/06	None	---
T	10/1/06	Sergeant Szekely	Time out not noted
T	10/2/06	Sergeant Beshara	Time out not noted
T	10/3/06	Sergeant Szekely	Time out not noted
T	10/3/06	Sergeant McGeary	Time out not noted
T	10/4/06	None	---
T	10/5/06	Sergeant Szekely	5 minutes
T	10/6/06	Sergeant Szekely Sergeant Szekely Sergeant Bonace Sergeant Stewart Lieutenant Mastro	5 minutes 1 minute 10 minutes 10 minutes 10 minutes
T	10/7/06	Sergeant Szekely	Time out not noted
T	10/15/06	Sergeant Szekely Sergeant Minenok Sergeant Szekely	Time out not noted Time out not noted Time out not noted
T	10/16/06	Sergeant McGeary	Time out not noted
T	10/17/06	Sergeant McGeary	Time out not noted
T	10/18/06	Sergeant Bonace Lieutenant Mastro	59 minutes 59 minutes
T -- -- --	10/19/06	Sergeant Wollet Sergeant Bonace Lieutenant Tabachino Sergeant Kountz	5 minutes Time out not noted Time out not noted Time out not noted
T	10/20/06	Sergeant Yurco	Time out not noted
T	10/21/06	None	---
U	8/1/06	Captain Tabachino Sergeant Beshara Sergeant Szekely	19 minutes 19 minutes Time out not noted

Pod	Date	Supervisory Staff Present in Pod	Duration of Stay
U	8/2/06	None	---
U	8/3/06	None	---
U	8/4/06	None	---
U	8/5/06	Sergeant Minenok	Time out not noted
U	8/6/06	Sergeant Minenok Sergeant McGeary	Time out not noted 1 minute
U	8/7/06	Sergeant Szekely Sergeant Minenok	37 minutes Time out not noted
U	8/15/06	Sergeant McGeary	Time out not noted
U	8/16/06	None	---
U	8/17/06	None	---
U	8/18/06	Captain Tabachino Sergeant Kountz	10 minutes 10 minutes
U	8/19/06	Sergeant Minenok	Time out not noted
U	8/20/06	Sergeant Minenok Sergeant Szekely	Time out not noted Time out not noted
U	8/21/06	Sergeant Szekely	Time out not noted
U	9/1/06	Sergeant Yurco	12 minutes
U	9/2/06	Sergeant Minenok	7 minutes
U	9/3/06	Sergeant Minenok	Time out not noted
U	9/4/06	Sergeant Minenok	7 minutes
U	9/5/06	Sergeant Szekely Sergeant McGeary Sergeant Yurco	Time out not noted Time out not noted Time out not noted
U	9/6/06	Sergeant McGeary	Time out not noted
U	9/7/06	None	---
U	9/15/06	None	---
U	9/16/06	None	---
U	9/17/06	Sergeant Minenok	5 minutes
U	9/18/06	Sergeant Minenok	Time out not noted
U	9/19/06	Sergeant McGeary	Time out not noted
U	9/20/06	None	---
U	9/21/06	None	---
U	10/1/06	Sergeant Minenok Sergeant Szekely	Time out not noted Time out not noted
U	10/2/06	None	---
U	10/3/06	Sergeant Szekely Sergeant Beshara	1 minute 14 minutes
U	10/4/06	None	---
U	10/5/06	Sergeant Szekely	Time out not noted
U	10/6/06	Sergeant Stewart Lieutenant Mastro Sergeant Bonace Sergeant Stewart	5 minutes 20 minutes 20 minutes 20 minutes

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Pod	Date	Supervisory Staff Present in Pod	Duration of Stay
U	10/7/06	Sergeant Szekely	1 minute
U	10/15/06	Sergeant Minenok	Time out not noted
U	10/16/06	Sergeant Szekely Sergeant McGeary	1 minute 20 minutes
U	10/17/06	None	---
U	10/18/06	Sergeant McGeary	Time out not noted
U	10/19/06	Sergeant Wollet	Time out not noted
U	10/20/06	Sergeant Yurco	4 minutes
U	10/21/06	None	---

My first observation is that the form of the logs themselves reflects an absence of effective supervision. Whenever any supervisor comes into the pod, the officer on duty should note the time the person arrives and the time he or she leaves. The most cursory review of pod logs by supervisory personnel would have demonstrated pod officers' failure to perform this basic function – a failure that supervisors could have remedied easily if they had wished to do so.

A review of these logs indicates that there are days when no supervisor – even a sergeant – comes into a pod. These days are marked 'None' in the "Supervisory Staff Present in Pod" column of the chart. When they did pay a visit, supervisors often remained in the pod only a matter of minutes, sometimes only one minute.

Tours by lieutenants, captains, and the warden were highly exceptional. Lieutenants visited a pod only five times. Captains toured a pod only six times, and the warden made only three visits. One of the Warden's visits (August 3 to H/I Pod) was in the company of the grand jury during its inspection of the jail. Thus, pod officers, at least some of whom are untrained for all practical purposes, received virtually no meaningful supervision from lieutenants, captains, and the warden, and only intermittent, brief supervision from sergeants. This failure greatly exacerbates the dangers of crowding.

IX. Impact of the March 30, 2005 Emergency Release Policy on Crowding

As crowding in the jail became increasingly unmanageable, the Mahoning County Court of Common Pleas filed a *Judgment Entry approving Mahoning County Jail--Emergency Overcrowding Policy* on March 30, 2005; the Common Pleas Court entry was in response to a March 28, 2005 letter from the Mahoning County Commissioners and Sheriff Wellington requesting this action. I have attached the Judgment Entry and letter of March 28, 2005 as Exhibit 14 to this report. The approved policy identifies 13 categories of prisoners to be released (from the lowest to the highest category) in order to ameliorate crowding in the jail.⁴⁸ I have attached the text of the March 30, 2005 emergency release policy itself as Exhibit 15. The Common Pleas Court and County Court judges in Mahoning County approved a revised emergency release policy by a Judgment Entry dated May 1, 2006. I have attached the revised policy as Exhibit 16. Without going into detail, I simply note that the revised policy is somewhat stricter than the earlier version regarding authorizations for release.

As of October 27, 2006, jail officials had released 5,313 inmates pursuant to one or the other of the emergency release policies the Common Pleas Court approved. The following table reflects the number of released prisoners in each category of the policy:

Emergency Releases by Category

Category in Policy	Number Released
Category 1	3,526
Category 2	2

⁴⁸ The Judgment Entry indicates that the Emergency Release Policy is intended "to resolve the lack of staffing due to inadequate funding at the Mahoning County Jail." The text of the Commissioners' and the Sheriff's request, however, makes it clear that funds are not available for allocation for the employment of additional staff. Thus, it is relief from the impact of crowding on the maintenance of a constitutional jail that the Commissioners and the Sheriff sought.

Category in Policy	Number Released
Category 3	62
Category 4	63
Category 5	679
Category 6	19
Category 7	178
Category 8	7
Category 9	2
Category 10	11
Category 11 ⁴⁹	462
Category 12	213
Category 13	89

I have reviewed a copy of the October 27, 2006 emergency release report that I received from the Sheriff's office. Column 2 of the report contains a list of releases by ascending release category. Because this report consumes more than 100 pages, I have not attached it as an exhibit to this report. If the three-judge court wishes me to do so, I shall submit it.

Column 4 of the emergency release report presents the list of releases by date of entry into the jail. The court to which the released prisoner's case was assigned is identified in column 8. Column 7 indicates the length of sentence, if any, of the released inmate. By subtracting the date in column 5 (scheduled release from jail date) from the date in column 9 (emergency release date) one can identify the total number of bed days the operation of the emergency release program saved. As of October 27, 2006, this number was 39,620.

⁴⁹ Category 11 releases are "subject to any conditions imposed by the trial court ..." Thus, unlike other categories, these releases are not automatic.

X. Crowding and Maintenance

One inevitable consequence of extreme crowding is that stress on the physical plant of the correctional facility will increase. In particular, fixtures such as toilets, showers, and lavatories will be used at a rate higher than that anticipated in a facility adhering to its design capacity. The jail is no exception.

Exhibit 17 provides information in response to the following request:

Please send me all maintenance requests submitted relating to pods by month since January 2006, indicating which of the reported problems were addressed. Please include maintenance requests related to housing unit pods including but not limited to toilets, lavatories, cell lights, intercoms, ventilation, temperature, and pod cameras.

This document requests highlights maintenance requests that appear to me to be most directly related to crowding.

The following table reflects a curious fact regarding maintenance activities in the jail. The number of monthly maintenance requests varied wildly, from 11 in January to 106 in April 2006.⁵⁰

Maintenance Requests by Month

DATE	# OF MAINTENANCE REQUESTS
December 2005 (partial)	4 ⁵¹
January 2006	79
February 2006	71
March 2006	77
April 2006	106
May 2006	72
June 2006	40
July 2006	11
August 2006	None received from jail staff
September 2006	None received from jail staff

⁵⁰ I made my request for documents, including maintenance requests, in a letter of August 29, 2006. I asked for maintenance requests from January 1, 2006, but did not indicate a cut-off date. Thus, the absence of requests for August and September probably reflect Captain Lewandowski's good faith interpretation of my request rather than a total absence of maintenance requests for those months.

⁵¹ This number includes only the few maintenance requests that were submitted in December 2005 and addressed in January 2006.

During the period addressed (January through July 11, 2006) there were 460 maintenance requests of the type I listed in my request for documents. In 219 of these requests jail officials provided complete information, *i.e.*, the date the request was made and the date the maintenance deficiency was corrected. The average time it took maintenance staff to respond to these 219 requests was 19.47 days. Incredibly, two of these 219 requests were pending for more than 200 days before maintenance staff addressed them. Eleven of these requests were pending for between 100 and 199 days, and 24 of these requests were pending for between 50 and 99 days before repairs occurred.

If one reviews the 241 maintenance requests for which no repair date was provided, one sees that a number of these requests were quite important. They included broken intercoms between cells and officers' stations, malfunctioning doors, black flies coming out of a sink in H Pod on January 22, 2006, a "hole being dug in visitation window" in the N Pod visiting area on January 25, 2006, the need for extermination of vermin, and broken showers. In addition, there were numerous requests for the repair of malfunctioning toilets and lavatories in cells.

A number of toilets were not functioning during my October 2006 of the jail. For certain periods during that tour no toilets in the jail were working. Both staff and inmates told me that the latter is not an uncommon phenomenon. Water pressure at a significant number of lavatories was near non-existent, and almost all prisoners testified that the heating system is not sufficient to keep cells at a reasonably warm temperature, particularly at nights. I personally witnessed the areas where microwaves are located in

pod dayrooms. The cabinets under some of these microwaves were filthy and rotting, and the surface on which the microwave was resting was unclean.

One reason for the maintenance-related difficulties I have described is a shortage of maintenance staff at the jail, particularly on evenings and weekends. This is a matter that has arisen in previous representations by the defendants to the district court. The *Mahoning County Criminal Justice Working Group's May 1, 2006 Final Report* ("Final Report"), Doc. No. 191, informed the district court that the "County Facilities Department has doubled its maintenance staff which will allow an afternoon shift maintenance to be implemented effective the first week of May, 2006." *Final Report* at 29-30. The report also stated that "(t)he Commissioners have also authorized the County Facilities Director to hire additional employees and train them in order to maintain a seven day a week maintenance operation with five days manned twenty-four hours a day." *Id.* The representations in the *Final Report* are based on Exhibit T to that report, an August 18, 2006 letter from Peter Triveri, the Director of the Mahoning County Facilities Management, to Linette Stratford, Esq., counsel for the defendants in this case.

In fact, the defendants have not provided the additional coverage described in the *Final Report*. Exhibit 18 reflects county maintenance staff reporting to the jail in August and September 2006. Although maintenance workers were in the jail five days a week during the day shift (7:00 a.m. to 3:00 p.m.), the maintenance capability on the afternoon shift (3:00 p.m. until 11:00 p.m.) is minimal. On most days coverage is limited to one "artisan helper" rather than a full-fledged artisan. There is no physical coverage of the jail on weekends. Rather, all maintenance coverage is available only on an "on call" basis. It is difficult for me to reconcile the coverage reflected in Exhibit 18 with the

assertion that the addition of an afternoon shift required a doubling of the maintenance staff. *See* the first paragraph of Exhibit T to the *Final Report*.

In summary, it is obvious that the excessive number of inmates in the jail is putting great strain on physical facilities and maintenance. It is equally clear that the volume of maintenance requests is beyond the ability or will of maintenance staff to take reasonable responsive action. Of equal importance, the frequency of repetitive maintenance requests regarding the same or similar problems reflects a lack of any semblance of an effective preventive maintenance program in the jail. Even at design capacity, any correctional facility requires ongoing and effective preventive maintenance. The level of crowding I have described virtually guarantees that the absence of such a program will result in the rapid and substantial deterioration of the physical plant, something that contributes directly to security concerns as well as environmental problems.

XI. Crowding and Violence in the Jail

There are a number of sources of information regarding violence and other forms of misconduct by inmates in the jail. One of these is the description of reasons for unscheduled lockdowns discussed earlier in this report. In order to gain the most comprehensive picture of such behavior, however, I have relied on two other sources. The first was a copy of each incident report (sometimes called violence reports) from a compact disc (CD) prepared by Captain Lewandowski. *See* Exhibit 19. These reports include incidents selected by jail officials as reflecting violence during the months of January through July 2006. These officials had selected these reports for plaintiffs' counsel before I made my document request on August 29, 2006, and I relied on these

selected reports to avoid extensive duplication of already-copied records. In addition, Mr. Lewandowski provided me with all incident reports for August, September, and October 2006. All of the reports I discuss in this section of the report reflect "major" or "serious" infractions, the latter being the highest level of disciplinary offense at the jail.

The second source of information I relied on was the disciplinary log containing a summary of disciplinary reports that resulted in a hearing before a disciplinary officer. *See* Exhibit 20. These disciplinary log entries do not contain references to minor offenses, which are dealt with informally by jail personnel.

Some misconduct incidents appeared only on the compact disc, while others appeared only on the disciplinary log. In a number of instances, the same misconduct incident appeared in both the sources on which I relied. In those instances, I eliminated duplications. Exhibit 21 is a summary of all incident reports drawn from the compact disc and the disciplinary logs after the elimination of duplications.⁵² My initial purpose was to identify those offenses that appear to me to pose the highest risk of safety to inmates and staff, as well as those that tend to show a lack of control over prisoners' conduct. Because of an initial error in the selection of these data, several offenses were included that do not fall within either of these categories. The following table contains a summary of all offenses I reviewed, as well as the number of infractions for each listed offense. The total number of offenses is 37 and the total number of charges is 568.

⁵² The fact that some incidents of inmate misconduct appear only on one official jail record, while others appear on another or on both records, raises a serious question about the extent to which staff are able to control violence in the jail.

Disciplinary Charges Reviewed

Disciplinary Offense	Number of Incidents
Interfering with security operations	161
Fighting	100
Assault	63
Refuse to obey order	52
Blatant disrespect	47
Threatening	30
Being in another's cell	28
Repeated major offense	16
Conduct Disrupts	14
Conduct interfering	6
Tampering	6
Spitting/throwing object	5
Damaging county property	4
Smoking/possession of tobacco	4
Possession	3
Abusive language	2
Blocking safety device	2
Control another	2
Lying	2
Misuse	2
Non-emergency use of intercom	2
Stealing	2
Abuse of phone	1
Abusing privileges	1
Being in an unauthorized area	1
Clogging toilets	1
Failure to dress	1
False statement	1
Interfering with count	1
Intimidation	1
Offer bribe to deputy	1
Repeated minor offenses	1
Rioting	1
Ripped sheet	1
Sex proposal	1
Theft	1
Unauthorized retention	1
Total	568

The first eight offenses deserve special attention. The large number of fights and assaults (162) is the best measure of actual inmate violence in the jail. In addition, the 30

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charges for threatening are only one degree removed from a fight or an assault. These numbers, which reflect only the known number of such offenses, in my opinion are evidence of a high rate of violence in the jail and are a direct reflection of crowding.⁵³

Other frequently noted offenses bear directly on staff's control over inmates' behavior. Refusals to obey an order (52 offenses) and blatant or persistent disrespect (41 offenses) are symptomatic of inmates who are or who act like they are free to engage in behavior that seriously threatens control by uniformed staff. Interfering with security operations (161 offenses), while it may consist of a wide range of infractions, is a frightening indication of the frequency of inmates' attempts to destabilize the security of the jail. The same is true of "conduct which disrupts" (16 offenses).

Being in another inmate's cell is a very serious offense. It provides an opportunity for physical violence, coerced or consensual sexual conduct, and manufacture or use of contraband. My own interviews with inmates and my tours of several pods during my most recent visit to the jail confirm that such incursions go unnoticed by staff. As I have noted above, stealing property from cells is common and this conduct is a direct result of the ease with which an inmate can enter another's cell without being noticed. According to one prisoner, standing in front of a cell other than his own and simply yelling, for example, "Pop 7," is likely to result in the pod officer's unlocking of cell 7. Given the crowded condition of many of the pods when all or most

⁵³ Several inmates whom Mr. Glass or I interviewed told us that fights sometimes go unnoticed by pod officers. Such fights (as well as assaults and threats) may occur in cells when cell doors are open. Inmates acting in a concerted manner may shield others from an officer's view. In addition, the significant variation in the number of incidents per month, from a low of 21 in February to a high of 79 in September, reflects uneven enforcement, thus supporting the logical inference of serious misconduct that remains undiscovered or unreported by staff.

inmates are out of their cells and the possibility of using other inmates to block the pod officer's view of the cell door, this inmate's statements are highly credible.⁵⁴

Other calculations provide additional detail about the offenses and incidents I reviewed. Exhibit 19, (Incident Reports by Pod (From CD)) identifies, among other things, the number of inmates involved in particularly dangerous and violent incidents. Fights involving three, four, five, or even seven inmates appear. The last of these in fact was a riot in P Pod on September 7, 2006 involving 40 inmates, of whom only seven were charged as major participants.⁵⁵ The "comment" column on this exhibit also indicates that a number of major or serious offenses did not result in a formal hearing on a misconduct report.⁵⁶

Exhibit 20 identifies all disciplinary log entries not duplicated on the compact disc. This exhibit, unlike the records on the CD, indicates the disciplinary sentences offending inmates received upon findings of misconduct. Disciplinary Lock Up (in O Pod) is a frequent punishment, indicating that hearing officers regard these offenses as serious ones.⁵⁷ Disciplinary segregation may extend for as long as 30 days.⁵⁸

⁵⁴ It was in this pod that Mr. Glass and I saw one inmate receive four lunches (brought to him by other inmates) and others receive more than one lunch. This is evidence of inmates' assumption of the existence of powerful inmates who serve as "bosses" in a housing unit.

⁵⁵ According to staff, this riot resulted from disagreements among inmates resulting from the "sale" of places on visiting date lists by one or more inmate bosses in the pod. In my experience if corrupt inmate behavior exists in one housing unit, it is highly likely to affect other units as well. As this large-scale incident exemplifies, permitting inmate bosses to run parts of the operation of a housing unit is extremely dangerous. This incident also suggests that crowding may be affecting inmates' opportunities to visit, a problem I was unable to confirm from other sources.

⁵⁶ This is the case whenever the "comment" column notes, "not on discipline log."

⁵⁷ Imposition of disciplinary lock up may be identified as "DLU" or "DBL." The latter is usage from the old jail before the construction of the Justice Center facility.

In summary, the extent of violence in the jail is excessive. Disciplinary hearing logs as well as incident reports I reviewed reflect conduct that threatens the safety of inmates and staff. These sources also demonstrate a level of disrespect and confrontation of staff by inmates that persuades me that the extent of control by staff over prisoners in the facility is at best tenuous. The absence of frequent shakedowns that I have discussed earlier in this report makes the environment in the jail all the more dangerous.

XII. Conclusions

The three-judge court in its September 7, 2006 order directed me to reach conclusions with respect to two questions:

- whether crowding at the jail is the cause of constitutional violations; and if so,
- whether there is any other viable form of relief, short of a prisoner release order, that could remedy the violations.

My response to the first issue is in the affirmative. Up to this point I have refrained from describing the findings and conclusions in the district court's Memorandum Opinion of March 10, 2005. The most casual comparison of the court's findings and conclusions in that opinion, however, indicates that the current "conditions of confinement ... at the Mahoning County Justice Center ... [continue to] violate the United States Constitution." *Memorandum Opinion* at 40. The population in the jail exceeds any reasonable definition of density and, in and of itself, creates a dangerous likelihood of harm to prisoners. The absence of proper classification and the mixing of all categories and groups of inmates in a deteriorating physical plant increase that likelihood to a near-certainty. Records of

⁵⁸ One unfathomable example of punishment is "no toilet for 24 hours" in response to "clogging toilets, interfering with security operations." See incident on this exhibit for June 2.

violence indicate that inmates in fact are being injured as a result of crowding and that conditions conducive to mass disturbance prevail.

The defendants have taken advantage of the population variance approved by the Bureau of Adult Detention of the Ohio Department of Rehabilitation & Correction while all but ignoring the critically important conditions the Bureau attached to that variance. The crowded housing units I have described in this report are a far cry from the "modified dorms" Bureau of Adult Detention staff had in mind when they approved the variance allowing increased population in the jail.

For these reasons and in view of the many other serious deficiencies this report has described, I have reached the opinion – based on more than 30 years of experience in corrections – that the conditions in the jail are ripe for a highly likely if not near-inevitable explosion. Tensions are high, and staff are unable to observe, let alone control, inmates' behavior in the pods. These tensions result from idleness stemming from the lack of sufficient meaningful activity; from the stress on the physical plant that contributes substantially to already unacceptable conditions of confinement; and from the dangers caused by the ongoing verbal and physical confrontations that occur when too many inmates must share dayrooms and other common spaces to eat, recreate, use the telephone, wash their clothes, or perform other functions. To all of this one must add the fact of almost non-existent oversight of untrained or only partially trained line staff by supervisory uniformed and non-uniformed officials.

Without question, crowding is the root cause of constitutional violations in the jail. Other factors may contribute to this state of affairs, but no remedial efforts will address these violations in the absence of a substantial diminution of crowding.

City of Youngstown officials have suggested that staffing and opening the six currently unused pods in the South Tower would provide an adequate remedy for the problems I have described in this report. I offer no opinion as to whether this is a remedy within the three-judge court's power to order; nonetheless, I have considered the City's argument carefully and have concluded that it is unworkable and insufficient. Such an order would involve a federal court in the details of allocations of the County's limited budget to numerous competing needs, something – as I have indicated earlier in this report – I cannot analyze, let alone recommend. Another suggestion has been to require the Sheriff to enter into contracts with other counties that may have available beds to house the overflow from the Mahoning County Justice Center. For the reasons I have just given, I cannot recommend this as a feasible remedy, even in the unlikely event that such beds exist in sufficient numbers to alleviate crowding in the jail. The same is true of the suggestion that opening the minimum security jail would be a feasible alternative form of relief. Apart from the question of the appropriateness of such a remedy, the all-inmates report indicates that there were only 43 pre-trial prisoners facing misdemeanor charges and 21 sentenced misdemeanants in the jail on October 1, 2006. The removal of this number of inmates from the jail would fall far short of remedying the problems the record in this case reflects.

The opening of the unused pods in the South Tower would not constitute effective relief to remedy the unconstitutional crowding in the jail. The first step required to defuse the dangerous situation in the jail is the proper assignment of correctly classified inmates in such a manner as to avoid the phenomenon of improper mixing I have described. At the moment, 15 female prisoners must be removed from H Pod. All of

these prisoners are maximum security inmates who are living in a pod (and sometimes in a cell) with lower classifications of prisoners. This move alone would consume one of the unused 30-bed pods in the South Tower.

In addition, at least 58 maximum security male inmates are housed in double-occupancy cells or share pods with other classifications of prisoners and, thus, must be moved from their present assignments. The mixing and the use of double occupancy cells for these prisoners not only violate the specific condition imposed by the Bureau of Adult Detention when it issued a capacity variance for the jail, these practices also violate any notion of sound correctional practice. The transfer of these inmates to the South Tower would consume two additional large pods.

Closely related to what I have discussed in the immediately preceding paragraphs, reliance on the opening of currently unused pods in the South Tower ignores the fact that all cells cannot be used to house inmates at any given time. The very nature of a correctional facility, particularly a jail, involves some degree of inefficiency in the use of beds. Men and women cannot live in the same pod, maximum security inmates (both men and women) must be separated from other classes of prisoner, juveniles must be separated from adults, gang members must be separated from members of rival gangs, prisoners under separation orders must live in different housing units, older inmates should be separated from pods in which younger prisoners live, mentally ill prisoners must be housed in a therapeutic and protected setting, and inmates in short-term disciplinary segregation must be separated from all other inmates, including those in long term, non-punitive administrative segregation. These are only some of the factors that make it necessary to have a vacancy rate of at least 10% in a jail, the operation of which

is much more complicated than that of an adult prison. The maintenance of this vacancy rate at the current level of the jail's population would require approximately 45 additional beds.

All of this is to say that simply assigning the existing population to properly stratified pods and maintaining the vacancy rate that any such reassignments inevitably will create would consume much if not virtually all the currently unused beds in the South Tower.

In addition, the County defendants have represented that, as of the date on which 2,811 inmates had been released from the jail pursuant to the Common Pleas Court's emergency release policy, 468 of those persons were on active furlough waiting to serve out their original sentence. *State of Ohio ex rel. Randall A. Wellington v. Kobly*, 2006 WL 2781392 (Merit Brief of Appellee and Response to Brief of Amici Curiae at 7, September 5, 2006). As of November 13, 2006, the date of the most recent emergency release report I have reviewed for the purpose of this report, 5,468 persons had been released from the jail under the terms of the emergency release policy. Thus, it appears that substantially more individuals are likely to be waiting to serve their remaining sentences when and if the emergency release program ceases to control the jail's population.

It is clear that the current emergency release policy approved by the Mahoning County Court of Common Pleas has prevented catastrophic crowding in the jail. More than 5,000 prisoners have been released from the jail pursuant to the release policy the Mahoning County Common Pleas Court approved, saving the County almost 40,000 jail days. The extent to which the Common Pleas Court's action binds municipal court

judges in the county is a matter currently pending before the Ohio Supreme Court. *State of Ohio ex rel. Wellington v. Koby*, 850 N.E.2d 68 (2006). A reversal of the opinion of the Mahoning County Court of Appeals, 7th Appellate District, by the Ohio Supreme Court would leave municipal court judges free to resume the practice of issuing "do not release" orders under threat of a finding of contempt against the Sheriff. Even if the Ohio Supreme Court affirms the lower court's decision, individual Common Pleas Court judges will continue to be free to ignore the plan they approved or may take advantage of the policy's provision permitting those judges to retain in the jail inmates in Level 11 status, as the plan defines that level. Even now, the operation of the emergency release policy is failing to prevent constant growth in the jail's population, which reached 486 prisoners on November 16, 2006. Of this number 382 were living in double occupancy cells on that date.

In summary, any relief the opening and staffing of currently unused pods in the South Tower would provide would be measured in days, not months. Any reprieve would last only for the time it would take to move prisoners currently housed improperly and unconstitutionally in the North Tower to the South Tower. Even that action would produce only a moment of equipoise before the flood of incoming earlier released prisoners on furlough and other newly arrested prisoners began a renewed cycle of horrendous crowding. The same, in my opinion, would be the case if the County opened the Minimum Security Jail, and the suggestion of the use of out-of-county beds for a mid-term or long-term solution to crowding is altogether impractical.

Thus, none of the other suggested remedies appears to be a viable form of relief in this case. By the very terms of the Prisoner Litigation Relief Act, the three-judge court is

not empowered to order the construction of new correctional facilities. 18 U.S.C. §3626(a)(1)(C).⁵⁹ Moreover, in my opinion, reliance on out-of-county beds or in other areas of Ohio or the minimum security jail to house prisoners from Mahoning County or opening the Minimum Security Jail would be unduly intrusive, unwise, and insufficient to address a problem of the magnitude I have described in this report. As I have indicated, such an order would involve the court in determining internal priorities of the County's budgeting and allocation process among various County agencies and needs. In effect, the three-judge court would become a receiver, replacing the judgment and discretion of elected County officials to spread available financial resources to cover a wide range of needs. The only other remaining remedy is a prisoner release order issued by the three-judge court.

I have concluded that only a prisoner release order limiting the population in the currently open jail to 288 inmates will constitute a viable remedy to address the unconstitutional crowding in the Mahoning County Justice Center. This number comprises 216 beds in single occupancy cells in housing units in the North Tower, and 72 beds in such cells in R Pod and U Pod in the South Tower. In addition, the defendants should be allowed to use cells in A, B, and C Pods (10 holding cells in the booking area and 14 medical hold areas for men and for women) in the North Tower, but only as they are needed for those special purposes. In other words, these special use cells should not be used for long-term occupancy by general population prisoners and, thus, should not be generally available for assignment of such prisoners.

⁵⁹ The full text of this subsection provides as follows: "Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts."

Even this number does not permit a vacancy rate of any magnitude, much less one of 10%, to permit proper assignments and reassignments of prisoners throughout the jail. Thus, the practical operational limit should be no more than 268.

This remedy will leave County officials free to increase the capacity of the jail by allocating additional resources for that purpose as they determine to be appropriate and feasible in light of the County's other financial needs and obligations. Moreover, the defendants may choose to approach the Bureau of Adult Detention with a request for a new variance based on conditions with which County officials and the local courts are prepared to live and to seek modification of the three-judge court order conditioned on the County's strict adherence to those variances. Absent such a realistic conditional variance capable of enforcement, I believe any continued encroachment on the design capacity of the jail will result in the continuation of the practices that have led to the current professionally unsound and legally unconstitutional state of affairs.

All of this leads to one overarching conclusion. It is not the size of the jail that is in issue in this litigation. Rather, whatever the size of the Mahoning County Justice Center – a matter for County officials to decide – that facility must be maintained in a constitutional fashion.

Respectfully submitted,

/s/ Vincent M. Nathan

Vincent M. Nathan
Court Appointed Expert